

70 FR 67665, November 8, 2005

A-489-807
AR: 4/03 - 3/04
Public Document
IA/Office 2: II

DATE: November 2, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Certain Steel Concrete Reinforcing Bars
from Turkey – April 1, 2003, through March 31, 2004

Summary

We have analyzed the comments of the interested parties in the 2003-2004 administrative review of the antidumping duty order covering certain steel concrete reinforcing bars (rebar) from Turkey. As a result of our analysis of the comments received from interested parties, we have made changes in the margin calculations as discussed in the “Margin Calculations” section of this memorandum. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

General Issues

1. Cost Averaging Periods for Habas and ICDAS
2. Depreciation Expenses
3. Matching Criteria
4. Exchange Rates
5. Universe of Sales
6. Date of Sale
7. Ministerial Errors in the Preliminary Results

Company-Specific Issues

8. Cost of Billets for Colakoglu
9. Financing Expenses for Colakoglu

10. Movement Expenses Provided by an Affiliate of Diler
11. Affiliated Party Billet Purchases for Diler
12. Edge and Defective Rebar Offsets to Cost of Manufacturing (COM) for Diler
13. Offsets to General and Administrative (G&A) Expenses for Diler
14. Denominator of the G&A and Interest Expense Calculations for Diler
15. Interest Expense Calculation for Diler
16. Omitted Costs for Diler
17. Offsets to G&A Expenses for Habas
18. Revocation for ICDAS
19. Affiliated Party Sales in ICDAS's Home Market
20. Arm's-Length Test for ICDAS
21. Level of Trade (LOT) for ICDAS
22. Whether to Treat ICDAS's U.S. Sales as Export Price (EP) or Constructed Export Price (CEP) Sales
23. Collapsing Issue for ICDAS
24. Startup Adjustment for ICDAS
25. Gain on Sale of Ship for ICDAS
26. Calculation of G&A Expenses for ICDAS
27. Exchange Rate Gains for ICDAS

Background

On May 6, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on rebar from Turkey. See Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent To Revoke in Part, 70 FR 23990 (May 6, 2005) (Rebar Prelim 03-04). The period of review (POR) is April 1, 2003, through March 31, 2004.

We invited parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results.

Margin Calculations

We calculated EP and normal value (NV) using the same methodology stated in the preliminary results, except as follows:

- We adjusted the reported buildings depreciation expenses for Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"); Habas Tibbi ve Sinai Gazlar Istihsal Endustrisi A.S. (Habas); and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS) to include an amount for the additional depreciation on buildings based on revalued assets. See Comment 2, below;

- We revised ICDAS's reported control numbers for certain U.S. observations to make them consistent with the reported product characteristics. See Comment 3, below;
- We revised the programming for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively "Colakoglu") and ICDAS to use only the transactions which either: 1) entered during the POR (where entry date is known); or 2) were shipped during the POR (if entry date is not known). See Comment 5, below;
- We have revised the programming for ICDAS to use contract date as the date of sale for all of its U.S. sales. See Comment 6, below;
- We added interest revenue to the home market price for Diler. See Comment 7, below;
- We converted the fixed overhead (FOH) amount reported for ICDAS to a per-metric ton basis prior to calculating a difference-in-merchandise (difmer) adjustment. See Comment 7, below;
- We amended the calculation of Habas's variable cost of manufacturing (VCOM) based on a revision to FOH. See Comment 7, below;
- We corrected a clerical error in the assignment of an LOT "match code" for ICDAS. See Comment 7, below;
- We revised the calculation of ICDAS's cost of production (COP) to include Demir Sanayi Demir Celik Ticaret ve Sanayi A.S.'s (Demir Sanayi) G&A expenses. See Comment 7, below;
- We increased Diler's reported international freight amount for its U.S. sales for which Diler paid the shipping costs in order to state the expenses on an arm's-length basis. See Comment 10, below;
- We adjusted Diler's reported costs to reflect the market price of billets purchased from Korfez Steel Industry and Trade Inc. (Korfez), an affiliated reseller. See Comment 11, below;
- We revised Diler's reported G&A expense rate calculation to exclude certain offsets that were insufficiently explained and justified. We also revised Yazici Demir Celik Sanayi ve Ticaret A.S.'s (Yazici's) G&A expense rate calculation to exclude the gain on the sale of a shipping vessel. See Comment 13, below;
- We revised Diler's interest expense rate calculation to include total net foreign exchange gains and then increased Diler's and Yazici's financial expense rates to zero. See Comment 17, below;

- For two of ICDAS's home market sales, we corrected errors in the data reported under the customer code and relationship fields. See Comment 20, below;
- We revised ICDAS's G&A expense rate calculation to exclude the gain on the sale of a shipping vessel. See Comment 25, below; and
- We revised ICDAS's interest expense rate calculation to include total net foreign exchange gains. See Comment 27, below.

Discussion of the Issues

General Issues

Comment 1: Cost Averaging Periods for Habas and ICDAS

In this review, Habas and ICDAS reported their costs on both a POR- and quarterly- basis. These respondents argued that the Department should rely on their quarterly cost data in its sales-below-cost analysis, in light of the fact that the world scrap price (*i.e.*, the major input in rebar production) experienced a significant increase during the POR. For the preliminary results, we followed our normal practice and used the POR costs reported by all four respondents, stating that: 1) the purchase price of scrap did not experience a significant and consistent increase during the POR; and 2) the increase in the purchase price of scrap was not significant enough to impact the total COM of the subject merchandise.

Habas and ICDAS argue that the Department's use of POR costs in the preliminary results distorted the dumping analysis because it artificially inflated costs at the beginning of the POR and artificially decreased them at the end, creating inaccurate cost test results. ICDAS contends that the Department's decision to use POR costs in this instance was not in accordance with its regulations, which allow for the use of a period shorter than the entire period of review "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation." See 19 CFR 351.414(d)(3); Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8926 (Feb. 23, 1998) (SRAMs from Taiwan) (where the Department determined that quarterly, rather than annual, averages resulted in a more accurate comparison of pricing behavior during the period of investigation (POI) given the significant decrease in the price of SRAMs throughout the POI); and Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15476 (Mar. 23, 1993) (DRAMs from Korea) (where the Department found that monthly weighted-average prices, rather than POI averages, were more representative of the respondent's pricing given the consistent downward trend in both U.S. and Singapore prices over the POI).

Although Habas and ICDAS acknowledge that the Department's normal practice in economies that did not experience high inflation is to calculate costs on a POR basis, they claim that the Department has used monthly or quarterly costs in instances where there is a single primary input whose costs undergo a significant and consistent increase or decrease from the beginning to the end of the reporting period which has a significant impact on the total COM. As support for this assertion, the respondents cite Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000) and accompanying Issues and Decision Memorandum at Comment 18 (Pasta from Italy 1998-1999 Review)¹; and Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip From the Netherlands, 65 FR 742, 747 (Jan. 6, 2000) (Brass Sheet and Strip From the Netherlands Final). According to Habas, after comparing the actual margin results in Brass Sheet and Strip From the Netherlands Final, the Department determined that: 1) the use of annual-average metal input costs resulted in inappropriate comparisons; and 2) monthly costs yielded a more contemporaneous comparison than POR costs.

Habas asserts that "consistency" in price changes is a relative concept which can be applied to the entire POR, sub-portions of the POR, or the starting and ending of the POR. As support for this assertion, the respondents cite Notice of Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From the Netherlands, 65 FR 30058, 30059 (May 10, 2000) (Brass Sheet and Strip from the Netherlands 1998-1999 Review), where the Department used monthly costs because it found that the cost of the primary input increased significantly for the first six months of the POR and declined significantly for the next six months of the POR, resulting in a distorted cost test. Conversely, Habas and ICDAS note that the Department has tested the consistency of changes in price from the beginning to the end of the POR. See Fujitsu General Ltd. v. United States, 88 F.3d 1034, 1038-39 (Fed. Cir. 1996) (Fujitsu v. United States), where the Court upheld the Department's use of a single POR cost based on a finding that there was no significant rise in costs from the beginning to the end of the POR, but rather monthly fluctuations in both directions that offset the changes in cost.

Habas and ICDAS refute the Department's preliminary finding that the increase in the purchase price of scrap was not significant enough to impact the total COM of the subject merchandise,² arguing not only that scrap is the single primary input used in rebar production, but also that the percentage of the cost of scrap relative to total COM is virtually the same as the percentage of metal inputs relative to total COM in Brass Sheet and Strip From the Netherlands Final (i.e., 70 percent). Habas further argues that because scrap costs account for 90 percent of the cost of steel

¹ In Pasta from Italy 98-99 Review, the Department recognized that it uses monthly or quarterly costs in instances of non-high inflation only when there is a single primary-input product and that input experiences a significant and consistent decline or rise in its cost throughout the reporting period.

² See the memorandum to Louis Apple from the team entitled "Concurrence Memorandum," dated May 2, 2005 (Prelim Concurrence Memo) at page 8.

billets (which represents the total direct material costs in rebar production), scrap cost is clearly the single primary input for the subject merchandise. Habas and ICDAS each note that it provided charts comparing the change in the cost of scrap to: 1) home market prices by quarter; and 2) total COM by quarter, respectively. See Habas's June 21, 2005, case brief at 19 and ICDAS's June 21, 2005, case brief at Attachment 4. Based on these analyses, Habas and ICDAS assert that the increase in scrap cost and the increase in home market prices or total COM, respectively, very closely track each other, given that a significant portion of cost is represented by scrap.

Habas and ICDAS each contend that the cost of its scrap input experienced a significant and consistent increase during the POR and provided charts demonstrating this increase. According to these charts, the average cost of scrap increased by 44 percent for Habas and 57 percent for ICDAS over the POR. The respondents argue that such increases are substantial and thus warrant the use of a shortened period for cost reporting purposes, consistent with Department precedent. See, e.g., Thai Pineapple Canning Indus. Corp. vs. United States, 883 F. Supp. 728 (CIT 1999) (Thai Pineapple 1); Thai Pineapple Canning Indus. Corp. vs. United States, 273 F.3d 1077 (Fed. Cir. 2001) (Thai Pineapple 2); and Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279 (Aug. 28, 2001) (Coils from Korea Amended). Habas notes that the decision in Thai Pineapple 1, where the Court reversed the Department's use of a POR-average cost on a single-primary-input product, applies to the instant case based on the following principles: 1) in a single primary-input case, the Department should be particularly sensitive to changes in the price of the raw commodity; 2) the determination of whether there was a significant change in cost is measured by reference to the endpoint of the POR against the starting point of the POR; and 3) the movement in cost need not be consistent in every sub-part of the POR. Regarding Thai Pineapple 2, the respondents note that the Department used separate weighted-average costs for two time periods in order to match actual costs with actual sales, given that there was an almost 50 percent increase in the cost of the fresh pineapple over eighteen months. Similarly, the respondents maintain that in Coils from Korea Amended, the Department determined that multiple averaging periods were appropriate where the currency value decreased by more than 40 percent in two months.³ On the other hand, Habas and ICDAS concede that in cases where the

³ Habas and ICDAS assert that although the final determination of Coils from Korea Amended was amended in accordance with a World Trade Organization (WTO) panel decision, the rationale for the Department's original determination regarding the appropriate period for cost reporting remains valid. As support for this assertion, ICDAS cites to Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (Mar. 11, 2005) and accompanying Issues and Decision Memorandum at Comment 5 (Swine from Canada) (where the Department noted that in Coils from Korea Amended, it was appropriate to use two averaging periods because of a major, external macroeconomic event (i.e., the precipitous decline in the value of the Korean won) that affected the appropriateness of using

change in prices was only ten or 12 percent, the Department held that those changes were not significant enough to warrant using shorter periods. See Pasta from Italy 1998-1999 Review. ICDAS asserts that the facts here are clearly distinguishable from those in Pasta from Italy 1998-1999 Review, given that the price increase in scrap between the first and last quarter of the POR was more than 50 percent, whereas in Pasta from Italy 1998-1999 Review, the percentage increase in the cost of its scrap during the POR was insignificant (i.e., one percent of the total COP).

ICDAS disagrees with the Department's preliminary finding that scrap costs increased only in the last quarter of the POR, stating that not only was there a significant increase (i.e., 57 percent) in its scrap costs from the beginning of the POR to the end, but there was also a consistent increase in its scrap costs throughout the period. See ICDAS's June 21, 2005, case brief at Attachment 4. ICDAS argues that this fact contradicts the Department's statement that "the purchase price of scrap both increased and decreased during the POR, indicating that there was not an overall significant fluctuation in one direction."⁴ According to ICDAS, although information in its August 16, 2004, Section D response shows that the average U.S. heavy melting scrap import price both increased and decreased during the POR, this price does not reflect the price that ICDAS actually paid for scrap. Habas also disagrees with the Department's conclusion, stating that, while Habas's scrap costs did in fact decline between the first and second quarters of the POR, the movement in cost need not be consistent in every sub-part of the POR. See Thai Pineapple 1.

Moreover, ICDAS contends that the use of POR costs generates fictitious profits or losses on sales transactions, significantly distorting the sales-below-cost analysis. According to ICDAS, it could not have predicted the significant increase in scrap input costs during the fourth quarter of the POR when it set its sales prices during the first three quarters of the POR. In addition, Habas notes that because all of its U.S. sales were made in the first half of the POR and the cost increase was most marked in the second half of the POR, its U.S. prices are being compared to an NV which is driven by costs that occurred six months or more after the U.S. sales were made. Habas asserts that the Department should follow its practice and use shorter cost periods because using a single weighted-average POR cost in this case results in inappropriate comparisons. See Pasta from Italy 1998-1999 Review at Comment 18.

In conclusion, both Habas and ICDAS contend that they have each met the Department's test for use of quarterly costs. However, ICDAS states that if the Department decides not to use quarterly weighted averages, it should at least use two weighted-average periods to avoid distortion in calculating dumping margins: one for the first three quarters of the POR and one for the last quarter of the POR. ICDAS asserts that this action would be consistent with the

period-wide averages).

⁴ See Prelim Concurrence Memo at page 8 citing to ICDAS's August 16, 2004, Section D response at Exhibit D-5A, Attachment I.

Department's precedent, and it cites Thai Pineapple 2 at 1081 (where the Department recalculated separate costs for the two fiscal years covering the POR and matched costs from each year to sales in that same year) and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664, 30675 (June 8, 1999) (Coils from Korea).⁵

The petitioners agree with the Department's preliminary decision to use POR-average costs. According to the petitioners, adopting a quarterly cost methodology in this case would be an unprecedented departure from the Department's practice, potentially having wide-ranging implications for all of the Department's current and future steel cases in situations where the fluctuation of scrap costs exceeds some indeterminate threshold. The petitioners note that neither Habas nor ICDAS has cited to any cases involving the subject merchandise or other steel products where the Department used a shorter period than the POR to calculate weighted average costs based on changes in scrap prices. According to the petitioners, the respondents' reliance on Coils from Korea is misplaced because it involved changes in currency values rather than to material inputs. Moreover, the petitioners contend that the Department's decision to use multiple averaging periods was reversed in Coils from Korea Amended.

The petitioners state that the Department has deviated from its standard methodology of computing a single weighted-average period cost only when the subject merchandise is a single primary input product and that input has experienced both a significant and consistent change in price over the POR. As support for this assertion, the petitioners cite the Department's standard methodology of calculating a POR weighted-average COP at 19 CFR 351.414(d)(3), upheld in Fujitsu v. United States.⁶ According to the petitioners, the Department noted in the preliminary results that "scrap is only one factor of the total cost of manufacturing" of the subject merchandise. See Prelim Concurrence Memo at 8. The petitioners maintain that, although scrap is the primary material input used in rebar production, there are a number of other significant factors that affect the COP of the subject merchandise (i.e., metallics, labor, electricity, and G&A expenses). Further, the petitioners contend that Habas and ICDAS failed to demonstrate that the change in scrap prices was either significant or consistent in this review so as to justify a

⁵ According to Habas and ICDAS, as noted above, although Coils from Korea was amended in accordance with a WTO panel decision, neither the WTO Panel's decision nor the Department's amended determination precluded the utilization of multiple averaging periods. See United States - Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R (Feb. 1, 2004) and Coils from Korea Amended.

⁶ The petitioners also cite to Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order: Brass Sheet and Strip From the Netherlands, 64 FR 48760, 48762 (Sept. 8, 1999) (Brass Sheet and Strip from the Netherlands Prelim), where the Department found that significant and consistent declines in the cost of metal inputs, constituting approximately 70 percent of the total COM, justified a departure from its normal practice.

departure from the Department's normal practice. In fact, the petitioners note that the scrap costs for both Habas and ICDAS declined from the first to the second quarter of the POR.⁷ With respect to ICDAS, the petitioners argue that the reported monthly scrap prices both increased and decreased over the POR, showing no consistent change over the period. The petitioners assert that while monthly scrap prices for Habas are not on the record, its scrap price trends would likely follow those of ICDAS, given that both companies purchase scrap on the same market.

According to the petitioners, the cases cited by the respondents are not relevant here. Specifically, the petitioners note that in Pasta from Italy 1998-1999 Review the Department refused to use monthly costs when a decline in prices of the single input occurred over a six-month period, rather than the entire POR, while in Brass Sheet and Strip from the Netherlands 1998-1999 Review there were consistent and sharp trends in the cost of metal over two separate 6-month periods (whereas here input prices fluctuated throughout the POR). The petitioners also disagree with Habas's reliance on Thai Pineapple 2 to support its contention that an increase in the price of an input need not be consistent over the POR. According to the petitioners, unusual factors were present in Thai Pineapple 2 (i.e., a longer POR and a significant delay between production and sale of the merchandise) that resulted in POR sales being tied to pre-POR costs and a rise in primary input costs of almost 50 percent over 18 months.⁸ The petitioners note that this combination of factors led the Court to conclude that use of POR average costs distorted the dumping margin calculations. However, the petitioners contend that because here both costs and prices are captured in the POR, Thai Pineapple 2 is inapposite.

The petitioners claim that Habas's and ICDAS's scrap percentages are artificially inflated based on poor inventory management. The petitioners speculate that the other two respondents did not request that the Department use quarterly costs because they must have had better inventory management during the POR. According to the petitioners, these factors, combined with the fact that scrap is a globally traded commodity and has thin profit margins and sensitivity to price fluctuations, demonstrate that the scrap price situation cannot be unique to this POR.

The petitioners contend that Department's precedent is clear in that the standard methodology is considered distortive only where there is both a consistent and significant change in the primary input over the entire POR. The petitioners assert that neither Habas nor ICDAS has demonstrated fully that this is the case. Regarding ICDAS's alternate methodology of computing costs in two periods (i.e., one consisting of the first three quarters of the POR and the second consisting of the final quarter), the petitioners contend that this an outright attempt to manipulate the margin calculations. The petitioners claim that this division of periods is highly unusual, when in the past the Department has only used regular periods, such as monthly (i.e., Brass Sheet

⁷ See Habas's June 21, 2005, case brief at 19 and ICDAS's June 21, 2005, case brief at Attachment 4.

⁸ See Thai Pineapple Canning Industry Corp., Ltd. v. United States, 23 CIT 286 (CIT 1999).

and Strip From the Netherlands Prelim), quarterly (i.e., SRAMs from Taiwan and DRAMs from Korea), semi-annual (i.e., Coils from Korea Amended) or annual periods (i.e., Thai Pineapple 2).

Finally, the petitioners contend that it would be inappropriate to make such a determination in the current proceeding without applying it to all four respondents in the review (not just Habas and ICDAS). As support for this assertion, the petitioners cite Coils from Korea (where the Department applied multiple averaging periods to all respondents because of a significant devaluation of the Korean won during the POI); and SRAMs from Taiwan (where the Department found that all respondents were directly affected by the decrease in worldwide SRAM prices during the POI). In any event, the petitioners argue that the Department has only applied shorter averaging periods to individual respondents in a proceeding when company-specific factors justified doing so, which is not the case here. See Final Results of Redetermination Pursuant to United States Court of International Trade Remand, Thai Pineapple Canning Industry Corp. Ltd. v. United States at Comment 4 (May 31, 2002) (where the Department applied a company-specific inventory holding period to one of the respondent's calculations, rather than a market-specific holding period as suggested by the respondent); and DRAMs from Korea (where the Department used monthly weighted average prices for a respondent whose foreign market value was based on third country prices given that there was a consistent decline in prices in the third country market during the POI). According to the petitioners, because scrap is a globally traded commodity, the scrap cost trends identified in this review would apply equally across all other reviews covering steel products. The petitioners point out that the other two respondents in this review have not requested that the Department use quarterly costs for them, despite using the same production processes and scrap and encountering the same trends in scrap prices as Habas and ICDAS. From this fact, the petitioners conclude that Habas and ICDAS are "cherry picking" by manipulating their cost calculations in order to achieve the lowest possible dumping margins.

Department's Position:

We disagree with Habas and ICDAS that the Department should deviate from its normal practice of using POR annual average costs to calculate COP and constructed value (CV) for these final results. We use annual average costs in order to even out swings in the production cost experienced by the respondent over short periods of time. This way, we smooth out the effect of fluctuating raw material costs (see Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990)), and erratic production levels, major repairs and maintenance, inefficient production runs, and seasonality (see Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47256 (Sept. 8, 1993)). In addition, relying on monthly or quarterly cost averaging periods creates uncertainty as to how accurately the average costs during the shorter period relate to the sales that occurred during the same period. Many factors affect the timing relationship between the purchase of the raw materials, production, and sale of the product. For example, factors such as the raw material inventory turnover period, the inventory valuation method used by the company (e.g., last-in, first-out versus first-in, first-out

versus weighted-average), the extent to which raw materials are purchased pursuant to long-term contracts, whether finished merchandise is sold to order or from inventory, and the finished goods inventory holding period affect the relationship of the sales transactions and costs. Over an extended period of time, these factors tend to smooth out, resulting in an average cost that reasonably reflects the cost of production for sales made throughout the year.

While our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted average cost for the entire POR, we have resorted to using shorter cost averaging periods in unusual cases. See SRAMs from Taiwan (where we calculated quarterly weighted-average costs due to a significant and consistent price and cost decline in the market). See also DRAMs from Korea (where we determined that the Department may use monthly weighted-average costs where a consistent downward trend in both the U.S. and home market prices exists during the period); Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680, 39685 (Oct. 30, 1986) (Fujitsu Comment 1) (EPROMs from Japan) (where we found that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of quarterly weighted-average costs); and Brass Sheet and Strip from the Netherlands Final. In Brass Sheet and Strip from the Netherlands Final, the Department determined that the cost of the main input raw materials changed significantly throughout the POR and that using monthly costs would more appropriately reflect the cost of the pass-through metals. In that case, the respondent tracked each input raw material purchase by sales transaction in its books and records. Therefore, it was possible to make a contemporaneous comparison of metal values and sales prices which resulted in a more accurate calculation of the dumping margin in that instance. We note that the Department did not use monthly comparisons for the fabrication costs, but only for the pass-through metal costs.

Since this case does not involve a high technology product which experienced drastic cost and price changes over a short period of time due to rapid technological advancements in the production process, we do not consider the facts in the SRAMs from Taiwan, DRAMs from Taiwan, or EPROMs from Japan to be relevant. Further, we find the respondents' reliance on Coils from Korea misplaced given that the instant case did not involve changes in currency values. Instead, we analyzed this issue following the criteria identified in the Brass Sheet and Strip from the Netherlands Final case, which appears to be more on point. Specifically, we analyzed the significance of the change in the COM, whether the change in cost occurred consistently and significantly throughout the POR, and whether the direct material inputs causing the cost fluctuation can be directly tied to the related sales transactions. In this case, the COM experienced by the respondents both decreased and increased during the first three quarters of the POR. It was not until the third and fourth quarters of the POR that the COM increased steadily. Because of this end of POR increase, the respondents claim that the COM for the first two quarters of the POR become inflated when using an annual average method, as compared to a quarterly average method. While we agree with the respondents that the annual average COM is higher than the quarterly average COM for the first two quarters of the POR, we disagree that the difference is significant. In analyzing this point, we first identified the five highest volume home

market control numbers and examined the impact of using annual average costs of manufacturing versus quarterly average costs of manufacturing. We computed the difference in the cost of the input raw materials for the first two quarters of the POR using quarterly average cost data versus annual average cost data, and noted that in both instances, the difference ranged from approximately five to 10 percent of the COM. See the November 2, 2005, memoranda from the Team to the File, entitled “Habas POR Summary for Five Selected Control Numbers” and “ICDAS POR Summary for Five Selected Control Numbers.” In the past, the Department has not considered one to ten percent increases significant. See Pasta from Italy 1998-1999 Review. Therefore, we find the respondents’ reliance on Thai Pineapple 1 and Thai Pineapple 2 irrelevant given that, in the instant case, we have found no significant change in the cost of scrap during the POR.⁹

In addition, unlike the facts in Brass Sheet and Strip from the Netherlands Final, where the price of the raw material inputs was a direct pass-through item (*i.e.*, as a service to its customers, the respondent purchased the input metals on the customer’s behalf and then billed the customer for the cost of the metals, the terms of which are set forth on the finished brass sales invoice) and it could be directly tied to each related sales transaction, sales transactions in this case cannot be directly tied to a particular shorter period’s cost. Thus, even if we considered the fluctuation in manufacturing costs to be significant enough to adopt shorter cost averaging periods, which as noted above we do not, simply comparing costs and sales prices occurring in the same quarter does not make the result any more accurate. Without a direct link between the input raw material costs and the directly related sales transactions, as was the case in Brass Sheet and Strip from the Netherlands Final, there is no certainty that in adopting the respondents’ quarterly cost approach, sales occurring in a given quarter are directly the result of the recorded raw material costs for the same quarter. As such, deviating from our normal practice in an attempt to make a more accurate comparison of sales prices and costs may well result in a comparison that is less accurate due to the many factors that influence a fair comparison of production and sales.

Therefore, for the final results, we have continued to follow our normal practice using POR weighted-average costs for the foreign like product in the overall weighted-average dumping margin for Habas and ICDAS.

Comment 2: Depreciation Expenses

In this review, each of the four respondents reported depreciation on buildings based on their historical acquisition value, in accordance with Turkish generally accepted accounting principles (GAAP). However, during ICDAS’s cost verification, we found that the reported amounts did

⁹ We also note that our decision in the instant case is consistent with Fujitsu v. United States, where the Court upheld the Department’s use of a single weighted-average POR cost given that there was no significant rise in the costs from the beginning to the end of the POR, only fluctuations throughout the POR in both directions that offset the changes in cost.

not reconcile with those recorded in ICDAS's general ledger. Therefore, for the preliminary results, we adjusted ICDAS's depreciation expenses to reflect the total depreciation recorded in its accounting system. In addition, we examined the financial statements of the remaining respondents to determine if a similar adjustment was warranted for these companies as well. We noted that the depreciation expenses reported by Colakoglu and Diler matched the amounts shown on their financial statements, whereas those for Habas did not. Consequently, for the preliminary results, we made an adjustment to Habas's reported costs to account for this difference.

The petitioners assert that the respondents' reported depreciation expenses are understated because they: 1) do not reflect the actual cumulative depreciation expense recorded in the companies' general ledgers; and 2) are based on the companies' historical value (in accordance with Turkish GAAP), rather than on the revalued asset values mandated in previous years by the Turkish government on non-building assets.¹⁰ Regarding the first point, the petitioners assert that, while the Department adjusted ICDAS's depreciation expenses to reflect the total depreciation recorded in its general ledger for the preliminary results, it failed to do so for the other respondents (*i.e.*, Diler, Colakoglu, and Habas).¹¹ According to the petitioners, in the interest of keeping with the purpose of the antidumping statute and determining margins as accurately as possible, Department should make a similar adjustment for them. See Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1191 (Fed. Cir. 1990); Lasko Metal Prods. Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994); Union Camp Corp. v. United States, 53 F. Supp. 2d 1310 (1999); Olympia Indus v. United States, 7 F.Supp.2d 997, 1000-1001 (1998); Nation Ford Chem Co. v. United States, 985 F. Supp. 133, 135 (CIT 1997); and Writing Instrument Mfr. Ass'n v. United States, 984 F. Supp. 629, 637 (CIT 1997).

Further, the petitioners argue that, although the Department also found at ICDAS's cost verification that this respondent failed to report its depreciation of buildings on a revalued basis, it did not restate the buildings' depreciation expense on a revalued basis for the preliminary results. The petitioners maintain that the Department has the statutory authority to disregard expenses based on accounting practices in accordance with local GAAP if those practices result in costs that do not reasonably reflect the COP. To support their assertion, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea, 64 FR 73196, 73206 (Dec. 29, 1999) (CTL Plate from Korea) (where the Department accepted certain changes in the respondent's accounting methods

¹⁰ In prior review periods, Turkey's economy experienced significant inflation. "Revalued" assets are assets whose values have been restated in order to reflect year-to-date cumulative asset revaluation rates published by the Turkish Ministry of Finance.

¹¹ Although the petitioners are arguing that we should adjust all of the remaining respondents' data for the difference between their reported depreciation expenses and those recorded in their respective financial statements, we note that, as stated above, Colakoglu's and Diler's reported expenses matched those shown on their financial statements.

which resulted in more accurate cost reporting, but disagreed with the respondent's revised asset useful lives, even though this method was supported by the Korean Appraisal Board, because it distorted the actual depreciation expenses). The petitioners further note that in Amended Order and Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela, 60 FR 64018 (Dec. 13, 1995), the Department took a voluntary remand to calculate the respondent's depreciation expenses based on revalued, rather than historical costs. The petitioners comment that Colakoglu was the only respondent in this review that reported depreciation expenses on buildings on a revalued basis. Therefore, the petitioners argue that the Department should make this adjustment to the remaining respondents' costs for the final results.

Colakoglu and Diler argue that the Department's normal practice is to rely on a company's books and records to the extent that they are in accordance with GAAP and reasonably reflect the company's COP. These respondents argue that the calculation of depreciation expenses on buildings on a historical basis is consistent with Turkish GAAP and is therefore reliable. In addition, Diler notes that amending the calculations as suggested by the petitioners would have a minimal effect. As a consequence, Diler argues that, because it is evident that using its reported depreciation for buildings did not create distortion in the calculations, the Department should not make any adjustment to its reported depreciation expenses. Colakoglu argues that its reported depreciation expenses were calculated (including revaluation) at year-end and that these expenses were consequently allocated to annual production. Further, Colakoglu maintains that because it has already reported depreciation on buildings on a revalued basis, no adjustment to its reported costs is warranted for the final results.

ICDAS asserts that the Department's established methodology for countries that do not have high inflation is to exclude from the reported costs any costs based on inflationary accounting, except to the extent that a company uses inflationary accounting methods to calculate costs in the normal course of business. As support for this assertion, ICDAS cites Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998) and accompanying Issues and Decision Memorandum at Comment 27. In addition, ICDAS notes that according to the antidumping law, a respondent's costs should be calculated based on the records of the exporter or producer of the merchandise as long as those records are kept in accordance with the GAAP of the exporting country. According to ICDAS, because: 1) the Turkish economy was not high inflationary during the POR; and 2) it has reported its depreciation expenses as recorded in its normal books and records which are maintained in accordance with Turkish GAAP, the Department should make no adjustment to its reported depreciation expenses for the final results.

Habas did not comment on this issue.

Department's Position:

We disagree with the petitioners' argument that the respondents' reported depreciation expenses are understated because they do not reflect the actual cumulative depreciation expense recorded in the companies' general ledgers. As noted above, there is no evidence on the record to indicate that Colakoglu's and Diler's reported depreciation expenses differ from the actual depreciation expenses shown on their financial statements; thus, we have made no adjustment for such a difference for the final results. Further, we made an adjustment to both Habas's and ICDAS's reported costs in the preliminary results to account for the difference between reported depreciation expenses and those shown on these companies' financial statements, and we have continued to do so for the final results. Therefore, we find that no further adjustment is necessary.

With respect to depreciation on buildings, however, we agree with the petitioners that these expenses should be accounted for on a revalued basis. Under section 773(f)(1)(A) of the Act, costs shall normally be based on the records of the exporter or producer if such records are kept in accordance with GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. Although the depreciation expenses reported by Diler, Habas, and ICDAS were based on their accounting records prepared in accordance with Turkish GAAP, we note that depreciation expenses on buildings were based on historical values. Since Turkey experienced significant inflation prior to the POR and its building acquisition dates are as early as the 1980s, we find that the recorded buildings depreciation expenses do not reflect current inflation-adjusted values in constant currency terms and are therefore understated. Accordingly, we find that the reported depreciation expenses do not reasonably reflect the total actual costs associated with the production of the merchandise and consequently should be adjusted in accordance with our practice. See Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less than Fair Value, 70 FR 9041 (Feb. 24, 2005), and accompanying Issues and Decision Memorandum at Comment 9 (where the Department found that it was appropriate to adjust the reported buildings depreciation amount reported by the respondent because it was based on historical values, despite the fact that this methodology was in accordance with Russian GAAP; as a result, the Department recalculated depreciation on buildings based on the fair market value of the fixed assets).

Consequently, for the final results, we have adjusted the reported buildings depreciation expenses for Diler, Habas, and ICDAS based on the difference between the historical and revalued assets and included the additional depreciation expenses in the COP. See the November 2, 2005, memorandum from Ji Young Oh to Neal Halper entitled "Cost of Production and Constructed Value Adjustments for the Final Results - Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S." ("Diler Final COP/CV Calc Memo 03-04"); the November 2, 2005, memorandum from Alice Gibbons to the file entitled "Calculations performed for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) for the Final Results in the 2003-2004 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey" ("Habas Final Calc Memo 03-04"); and the November

2, 2005, memorandum from Gina Lee to Neal Halper entitled “Cost of Production and Constructed Value Adjustments for the Final Results” (“ICDAS Final COP/CV Calc Memo 03-04”). Regarding Colakoglu, we note that because this respondent reported depreciation expenses in accordance with its financial statements, plus an amount for the difference between depreciation on buildings using a historical versus revalued basis (*i.e.*, in its G&A expenses), we have made no adjustment to its reported depreciation expenses for the final results.

Comment 3: *Matching Criteria*

Rebar is generally sold according to Turkish steel (*i.e.*, TSE) specifications in Turkey and American Society for Testing and Materials (ASTM) specifications in the United States. In the preliminary results, the Department treated these two standards as identical for matching and costing purposes, based on practice established in prior segments of this proceeding. The petitioners argue that this treatment is incorrect and that rebar produced to Turkish specifications (*i.e.*, TSE 708 IIIa) should instead be treated as similar to rebar produced to ASTM specifications (*i.e.*, ASTM 615). As support for its position, the petitioners cite Rautaruukki Oy v. United States Slip Op. 99-39, Consol. Ct. No. 97-05-00864 (Apr. 27, 1999) at 5, where the Department argued that any difference in steel specification renders a match similar rather than identical.

According to the petitioners, rather than administering this steel case in isolation, the Department should follow the administrative practices regarding model match criteria developed in other steel cases. Specifically, the petitioners contend that the Department should adopt one of the methodologies developed to address the overlap of physical differences among international specifications including: 1) creating a “basket” of ranges for physical and/or chemical characteristics and treating all merchandise within that range as identical (such as in the structural steel beams or the other rebar cases); or 2) requiring respondents to submit a characteristics chart and another specification equivalency chart (with alternative proposed equivalents). The petitioners note that because these charts include the chemical and physical properties of the steel product, interested parties (as well as the Department) are able to evaluate the respondents’ rankings.¹² In contrast, the petitioners assert that the field “ASTM Specification” required of the respondents in this case forces them to fit a foreign specification into one of the ASTM specifications, ignoring the fact that the merchandise does not have identical physical and chemical requirements and producing erroneous matches.

The petitioners focus their argument on ICDAS and argue that, contrary to ICDAS’s attempts to downplay the differences between the two standards, a review of ICDAS’s August 16, 2004, Section A response at Exhibit A-22 reveals that there are numerous chemical and physical differences. Specifically, the petitioners maintain that whereas the ASTM specification only requires a minimum phosphorus content, the Turkish specification requires a minimum content

¹² The petitioners state that, in practice, the Department often “collapses” several equally acceptable specifications into a single “model” by assigning the same “weight” to each specification.

for carbon, sulfur, nickel, and phosphorus. Similarly, the petitioners point to certain variations in physical requirements between the two specifications, claiming that while the yield strength is the same for both (i.e., equating to grade 60), the tensile strength and elongation requirements of the Turkish specification would be equivalent to the inferior ASTM grade 40.

Accordingly, the petitioners argue that if the Department continues to require the respondents to fit the home market specifications into one of the ASTM categories specified in the questionnaire, rather than incorrectly reporting the grade of its home market sales as “TSE 708 IIIa” (because this refers to a specification rather than a grade), ICDAS should have reported both a grade and specification of the merchandise. Specifically, the petitioners argue that under these circumstances, ICDAS should have reported that its home market products are produced to a grade equivalent to ASTM grade 40 because: 1) TSE 708 IIIa only has a single grade; and 2) this grade fails to reach the higher physical requirements of ASTM grade 60. Rather, the petitioners claim that ICDAS disregarded the grade characteristic altogether when reporting its control numbers to the Department. The petitioners argue that the Department should correct this error for the final results by reassigning ICDAS’s control numbers using programming language set forth in the petitioners’ case brief.

ICDAS maintains that the petitioners have raised the issue of model matching too late, since the Department has already not only completed the investigation and numerous administrative reviews in this proceeding, but also verified the information submitted in the current review and issued the preliminary results. Further, ICDAS claims that, contrary to the petitioners’ assertions, the Department has used methodologies for defining matching characteristics other than the two approaches described by the petitioners, including the one used in this case of requiring respondents to fit a foreign specification into one of the ASTM specifications. ICDAS contends that it would be unfair to make the last-minute changes suggested by the petitioners because: 1) the opportunity for comment on this method has always existed and the petitioners have never before raised this issue; and 2) the respondents have proceeded with this review based on the presumption of the Department’s consistent treatment of the matching criteria in this case.

Regarding the claims about the chemical and physical differences between the U.S. and Turkish specifications, ICDAS argues that the petitioners are incorrect. Specifically, ICDAS claims that the Turkish specification requirements for carbon, phosphorus, and sulfur are maximums, not minimums as suggested by the petitioners. Further, ICDAS states that there are no minimum or maximum requirements for nickel content in the TSE 708 IIIa sold by ICDAS in the home market. In addition, ICDAS claims that, contrary to the petitioners’ assertions regarding elongation, elongation requirements are minimums in all standards. ICDAS argues that the petitioners have raised such technical issues as yield and tensile strength without demonstrating their significance or explaining why these slight differences would prevent the Department from treating the Turkish and American specifications as identical. Finally, ICDAS argues that the mill test certificate included in Exhibit A-9 of its August 16, 2004, Section A response clearly shows that for the most part, the chemical requirements are met and that despite the very slight

differences, the merchandise sold to the United States by ICDAS satisfies the requirements of the Turkish standard.

Department's Position:

Throughout this proceeding, we have consistently used the characteristics form, size, grade, and ASTM specification to define the matching characteristics for product comparison purposes. We find that this hierarchy adequately captures the salient physical characteristics for rebar (except as noted below), and as a result, it yields matches that are accurate and thus, representative of the respondents' current dumping activity.

Moreover, while we acknowledge that this hierarchy differs from that used in other steel cases, we disagree with the petitioners that it yields distortive results due to erroneous matches. Specifically, if we compare the matching characteristics used in this case (*i.e.*, form, size, grade, and ASTM) to those used in the other rebar cases (*i.e.*, type of steel, yield strength, and size), we find that both sets of characteristics capture the essential qualities of the rebar under review and that each characteristic used in the other rebar cases is accounted for in our hierarchy. First, we note that the type of steel is not an issue in this proceeding because stainless steel products are not covered by the scope. Second, the yield strength characteristic used in the other cases is captured by the grade characteristic used in this case because grade is defined by the yield strength of the product. Finally, size is accounted for in both hierarchies. Therefore, we find that the petitioners have failed to demonstrate why the hierarchy used in this proceeding is less appropriate or relevant than that used in the other rebar cases.

Nevertheless, we agree with the petitioners that the Turkish specification is not identical to the ASTM specification in chemical and physical requirements. Therefore, for future segments of this proceeding, we will allow respondents to report the actual specification of the merchandise in the ASTM specification field (rather than requiring that respondents "fit" a foreign specification into one of the ASTM specifications). Further, we have examined the chemical and physical requirements of the Turkish specification and those of ASTM grades 40 and 60. Contrary to the petitioners' assertions, we note that each of these specifications is based on maximum, rather than minimum, chemical composition requirements. As a result, the chemical compositions of products produced to these different specifications can be slightly different, while still yielding the same physical characteristics. In addition, we disagree with the petitioners that the Turkish grade should be considered most similar to ASTM grade 40 in general, and rather find that the Turkish grade is more similar to ASTM grade 40 in tensile strength and elongation requirements, but more similar to ASTM grade 60 in the yield strength requirement. See ICDAS's August 16, 2004, Section A response at Exhibit A-22. Therefore, absent information on the record regarding which of these physical characteristics is more important, we find that the Turkish grade is equally similar to both ASTM grades 40 and 60 and have continued to treat them as such for the final results.

In this review, because three of the four respondents have reported a single cost for each control number based solely on form and size (regardless of different specifications and grades) and the fourth respondent (Diler) reported costs for each control number based on all of the matching criteria,¹³ amending the margin calculation program as suggested by the petitioners yields no difference in the calculated margin. However, when examining this issue for ICDAS, we noted that the control numbers for certain of the U.S. sales used in the margin calculations were reported incorrectly. We have corrected this error for the final results. See the November 2, 2005, memorandum from Brianne Riker to the file entitled “Calculations Performed for ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. (ICDAS) for the Final Results in the 2003-2004 Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey” (“ICDAS Final Calc Memo 03-04”).

Finally, in previous segments of this proceeding, certain respondents have reported sales of standard- and non-standard length merchandise. We have traditionally treated sales of non-standard-length merchandise as second quality products, although length is not a formal matching characteristic in this case. Although the issue was not raised in this segment of the proceeding, the Department is considering amending the matching characteristics to include a length criterion. We invite comments on this proposal in the on-going administrative review for the 2004-2005 review period.

Comment 4: Exchange Rates

In the preliminary results, the Department relied upon Turkish lira (TL) exchange rates published by the Dow Jones Reuters Business Interactive LLC (trading as Factiva). Diler asserts that, although the Department’s general practice is to rely on exchange rates stated to six decimal places, this practice is distortive in cases using TL. Specifically, Diler claims that the Department used a six-decimal place exchange rate of USD 0.000001 per TL on each day during the POR, whereas for its two U.S. sales the appropriate exchange rates were approximately 0.00000071 and 0.00000074. Therefore, Diler asserts that using an exchange rate stated only to six decimal places results in a significant overstatement of any TL-denominated price or cost item. Diler argues that this constitutes a ministerial error which the Department must correct by ensuring that the exchange rate file reflects eight decimal places rather than six.

The petitioners maintain that the Department correctly calculated the exchange rate to nine decimal places, but chose to format the exchange rates by truncating the values to only six places. According to the petitioners, this formatting is not reflective of the actual numerical value used in the calculations. Therefore, the petitioners contend that the Department should continue to use these exchange rates for the final results.

¹³ In this and previous segments of this proceeding, we have allowed the respondents to report their cost data on this basis based on their claim that the cost of producing rebar to the Turkish specification, as well as to ASTM specification grades 40 and 60, is the same.

Department's Position:

We disagree with Diler that we used incorrect exchange rates in our calculations. We have examined the exchange rate database used for the preliminary results for all respondents and confirmed that, while the rates were formatted to six decimal places in the output of the calculation programs, the actual exchange rates used in the calculations are stated to twenty decimal places. Therefore, we find that the figures used for the preliminary results accurately reflect the actual exchange rates in effect on each day of the POR. Consequently, we are continuing to use the same exchange rate database for the final results.

Comment 5: Universe of Sales

During the POR, ICDAS exported rebar to the United States through an affiliated party who acted as U.S. importer of record. In its U.S. sales listing, ICDAS reported all sales made through this company which had either contract dates or shipment dates during the POR. In addition, ICDAS reported the date of entry into the U.S. customs territory for each of these sales.

The petitioners argue that ICDAS improperly defined the universe of reported sales in this case, because it included all sales, rather than all entries, made during the POR. The petitioners maintain that this action was contrary to the explicit instruction in the Department's questionnaire, which requires respondents to report each sale entered for consumption during the POR. The petitioners note that the only exception to this general instruction for EP sales relates to when the entry date is not known; under those circumstances respondents are required to report each transaction involving merchandise shipped during the POR.¹⁴ According to the petitioners, these instructions are echoed in the Department's practice, and as support for their position they cite Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48783 (Sept. 8, 1999) (unchanged by the final results) and Certain Corrosion-Resistant Carbon Steel Flat Products From Canada: Final Results of Antidumping Duty Administrative Review, 70 FR 13458 (Mar. 21, 2005) and accompanying Issues and Decision memorandum at Comment 5.

The petitioners claim that defining the universe of U.S. sales using contract date is particularly inappropriate here, given that: 1) ICDAS's costs increased during the end of the POR, resulting in an increase in U.S. prices; 2) ICDAS reported a substantial number of sales with contract dates near the end of the POR, which neither were shipped nor entered during the POR; and 3) inclusion of these sales in the Department's margin calculations makes the difference between the revocation of the order with respect to ICDAS and an above-de minimis margin. The

¹⁴ According to the petitioners, should the Department determine that it is appropriate to reclassify ICDAS's U.S. sales as CEP transactions (see Comment 22, below), the universe of sales would remain the same as under the EP scenario because: 1) the only exception to the "universe of entries" rule is for CEP sales made after importation; and 2) all of ICDAS's U.S. sales were made prior to importation.

petitioners allege that, given the impact of these sales on the margin calculation, it appears that ICDAS has attempted to manipulate the Department's analysis, in willful disregard of the Department's instructions and well-established practice.

ICDAS disagrees that it has attempted to manipulate the Department's analysis in this case. Rather, ICDAS states that it properly reported all transactions with entry dates, invoice/shipment dates, or contract dates within the POR in order to give the Department the discretion to choose the appropriate universe of sales.¹⁵ According to ICDAS, the Department's discretion in this area is derived from the following facts: 1) the preamble to the Department's current regulations states that "neither the Act nor the AD Agreement specifies whether sales or entries are to be reviewed" (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27314 (May 19, 1997) (Preamble)); 2) the Department's regulations at 19 CFR 351.213(e)(1)(i) define the POR as covering "all entries, exports, or sales of subject merchandise" during the relevant time period; 3) while section 751(a)(2)(A) of the Act specifies that a dumping calculation should be performed for each entry during the POI, neither the Act nor the Department's standard questionnaire indicate that only entries should be reported for dumping analysis purposes; 4) the Department's dumping manual states that the date of sale selected in a proceeding determines the universe of sales to be reviewed (see the Antidumping Manual at Chapter 7 (IV) at 24 and Chapter 8 (III) at 8); and 5) the Department has consistently used the date of sale to determine the universe of sales analyzed in this proceeding.

ICDAS contends that the Department has reviewed sales, rather than entries, in many cases and that this practice has been upheld by the U.S. Court of International Trade (CIT). See FAG Kugelfischer Georg Schafer KGaA v. United States, 19 CIT 1177, 1181 (CIT 1995), *aff'd*, 86 F.3d 1179 (Fed. Cir. 1996) (FAG Kugelfischer). In addition, ICDAS argues that the Department has used this methodology in situations where, like here, the sales were EP sales. See e.g., Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (Oct. 17, 2001) and accompanying Issues and Decision Memorandum at Comment 11 (Pineapple from Thailand). Moreover, ICDAS notes that when a respondent in a prior segment of this proceeding requested that the Department limit its analysis to entries during the POR, the petitioners themselves argued that such a change in methodology was inappropriate. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 69 FR 64731 (Nov. 8, 2004) (Rebar Final 02-03) and accompanying Issues and Decision Memorandum at Comment 6.

¹⁵ Specifically, ICDAS contends that the petitioners were incorrect in their claim that numerous transactions in ICDAS's sales listing with contract dates near the end of the POR were not "shipped or entered during the POR." According to ICDAS, the Department included in its preliminary margin calculations many sales with contract dates in February and March 2004 which were all shipped during the POR and excluded sales which had invoice/shipment dates outside the POR.

Thus, ICDAS argues that the Department should follow its established methodology in this case and continue to review all sales with invoice/shipment dates during the POR for the final results.

Department's Position:

ICDAS is correct that the Department has consistently used the date of sale to define the universe of reviewed transactions in previous segments of this proceeding. However, we note that we are not precluded from reexamining this issue in the context of this review, and we have done so here. According to section 751(a)(2)(A) of the Act:

the administering authority shall determine (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry.

See section 751(a)(2)(A) of the Act (emphasis added). The Department's standard antidumping duty questionnaire instructs respondents to:

Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a date of sales within the POR. Do not report canceled sales. If you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.

See the Department's antidumping duty questionnaire issued to ICDAS on May 13, 2004, (emphasis added).

In accordance with section 751(a)(2)(A) of the Act and these questionnaire instructions, we have reconsidered our practice in this case and in these final results we based the universe of reviewed transactions for ICDAS on its entries during the POR (where entry date was known) or shipment date (where it was not). This action is consistent with our general practice in this area. See Pineapple from Thailand at Comment 11; and See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review, 66 FR 18747 (Apr. 11, 2001) and accompanying Issues and Decision Memorandum at Comment 2.

We agree with ICDAS that 19 CFR 351.213(e)(1)(i) permits the Department in an administrative review to cover, as appropriate, entries, exports, or sales of the subject merchandise. However, we disagree that this language implies that the three bases are equally preferable. Although the regulation lists entries, exports, and sales, it does so because the facts in some cases do not permit the linking of sales with exports or entries. When sales and entries can be linked, the Department prefers restricting the universe of sales encompassed in a review to entries in that period of review. In doing so, the Department is able to precisely quantify all expenses incurred in connection with each reviewed sale to the United States, which is not always possible when

the universe of sales is not limited to actual entries. In addition, this methodology ensures the calculated rate will correspond to the merchandise on which the duties are collected.

The rationale behind our practice is set forth in the preamble to the Department's regulations. Specifically, the preamble states the following:

[B]ased on the results of each review, the Department generally will assess duties on entries made during the review period and will use assessment rates to effect those assessments. However, on a case-by-case basis, the Department may consider whether the ability to link sales with entries should cause the Department to base a review on sales of merchandise entered during the period of review, rather than on sales that occurred during the period of review. These two approaches differ, because, in the case of CEP sales, the delay between importation and resale to an unaffiliated customer means that merchandise entered during the review period often is different from the merchandise sold during that period. Because of the inability to tie entries to sales, the Department normally must base its review on sales made during the period of review. Where a respondent can tie its entries to its sales, we potentially can trace each entry of subject merchandise made during a review period to the particular sale or sales of that same merchandise to unaffiliated customers, and we conduct the review on that basis.

See Preamble, 62 FR at 27314 (emphasis added).

The preamble goes on to describe certain limited exceptions to the general rule outlined above. Specifically, the preamble states:

[T]he determination of whether to a {sic} review sales of merchandise entered during the period of review hinges on such case-specific factors as whether certain sales of subject merchandise may be missed because, for example, the preceding review covered sales made during that review period or sales may not have occurred in time to be captured by the review. Additionally, the Department must consider whether a respondent has been able to link sales and entries previously for prior review periods and whether it appears likely that the respondent will continue to be able to link sales and entries in future reviews.

See Id.

In this case, there is no concern that certain transactions have been or will be “missed” because of a timing issue. ICDAS did not report transactions that entered in the beginning of the POR because they were reviewed in the context of the prior administrative review. Moreover, it has reported all transactions having a date of shipment in the POR.¹⁶ Therefore, it is clear that there have been no “missed” transactions caused by the change in methodology. It is also clear that

¹⁶ We note that none of these reported transactions was reviewed in the prior administrative review.

ICDAS has had the ability in this and past segments of the proceeding to link sales with entries. Therefore, we find that the exceptions outlined in the Preamble do not apply here.

While we acknowledge that the Department's decision to review sales, rather than entries, in certain cases has been upheld by the CIT, we find that neither of the cases relied upon by ICDAS are on point. Specifically, we note that ICDAS's reliance on Pineapple from Thailand is misplaced because the Thai respondent's sales in that review were CEP transactions. See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 66 FR 18596, 18598 (Apr. 10, 2001) (unchanged by the final results). Further, we note that in that case, the Department was concerned that "shifting the basis of {the} review at {that} stage may exclude a significant number of sales with entry dates within the POR but sale dates outside the POR." See Pineapple from Thailand, where we note that FAG Kugelfischer addressed the appropriateness of using sales versus entry data in the context of a sampling situation, unlike the use of actual sales and entry data here. Further we note that we stated in that case that, because there was "no disconnect between reviewed sales and entered transactions," we would continue to review all reported transactions. Conversely, in this review, there is a disconnect between the sales reviewed for the preliminary results and the entries which occurred during the POR. Because ICDAS provided sufficient data to permit the Department to review all entries during the POR,¹⁷ we find it appropriate to base our analysis on POR entries of subject merchandise.

Moreover, we find ICDAS's reliance on the Antidumping Manual regarding the Department's date of sale practice unconvincing. Specifically, we note that while the instructions regarding date of sale in the Antidumping Manual are appropriate in some cases, they do not reflect current practice for EP sales in the context of an administrative review. Similarly, we are unpersuaded by ICDAS's argument that neither the Act nor the standard questionnaire specify the reporting only of entries. Both the law and the questionnaire lack specificity regarding this issue, and thus provide the Department with the flexibility to include shipments (or just sales) in situations in which the facts do not permit us to restrict the universe of sales to entries. Nonetheless, it remains within the Department's discretion, and is, in fact, the Department's preference and practice to restrict the universe to entries when the facts permit us to do so.

Finally, we note that the petitioners raised this issue only with regard to ICDAS. Nonetheless, we have examined the data on the record for each of the other respondents. Regarding Diler and Habas, we found that neither of these respondents was the importer of record for its U.S. sales and therefore was not able to report entry date information. Consequently, in accordance with our practice, we have defined the universe of sales using the date of shipment for Diler and Habas.¹⁸ Regarding Colakoglu, however, we noted that this respondent reported entry dates for

¹⁷ As noted above, ICDAS properly did not report data related to entries which were reviewed in the prior administrative review.

¹⁸ We note that this methodology does not change the universe of reviewed transactions in this administrative review.

all of its U.S. sales based on communications with its importers. Therefore, we find that it is appropriate to use entry date to define the universe of sales for this company. In addition, it is clear that Colakoglu has had the ability in this and the prior segment of this proceeding to link sales with entries and that, as with ICDAS, using entry date to define the universe in this review would not result in any “missed” transactions. See Rebar Final 02-03 at Comment 6, where the Department specifically addressed this question. Therefore, consistent with our practice, we are basing the universe of reviewed transactions for Colakoglu on entries during the POR.

For the foregoing reasons, we have amended our calculations for Colakoglu and ICDAS for the final results to use all the transactions which entered during the POR where entry date is known and those shipped during the POR where entry date is not known.

Comment 6: *Date of Sale*

In the preliminary results, we based the date of sale for each respondent on the earlier of shipment date or invoice date, in accordance with our practice. Habas contends that the Department should revise its date of sale methodology to use the later of its contract or sales confirmation date as the date of sale for its U.S. sales transactions during the POR.

Habas contends that the Department’s regulations at 19 CFR 351.401(i) direct the Department to use the invoice date as the date of sale unless a different date better reflects the date on which the material terms of sale are established. According to Habas, in this review the material terms of sale (i.e., quantity and value) for its U.S. sales were established in contracts between Habas and its U.S. customers. Habas maintains that there was no variance between the terms set forth in the contracts and the actual terms at the time of shipment, as demonstrated by the U.S. sales documentation on the record of this review. Habas notes that the Department should consider this documentation to be representative of Habas’s selling activity during the POR based on the facts that: 1) there were only three U.S. sales during the POR; 2) the Department elected not to conduct a verification to review the contracts issued for the additional sales; and 3) the Department did not request any additional documentation for the other U.S. sales. According to Habas, the customer’s contract provides a detailed breakdown of each size and specification of rebar ordered along with the quantity of each line item. In addition, Habas maintains that the contracts establish the quantity tolerance levels and that the difference between the ordered and invoiced quantities during the POR never exceeded the established levels.

Habas asserts that it is particularly important in this case to use contract date as the date of sale, given the high volatility of raw material costs during the POR which impacted not only the COP, but also the terms of sale established with its U.S. customers. Habas notes that, while the appropriate date of sale for its home market sales is the earlier of shipment or invoice date, there is no requirement for consistency between the date of sale methodology used in the two markets. Moreover, Habas maintains that there are fundamental differences between its home market and U.S. sales transactions which justify a different date of sale methodology in each market (i.e., lead time, order size and product assortment, and sales volume).

Habas maintains that the use of contract date as date of sale for Habas in the current review is supported by the CIT's finding in SeAH Steel v. United States, 25 CIT Lexis 24; Slip Op. 2001-20 (2001). Habas argues that in that case, the CIT upheld the Department's choice of invoice date as date of sale because the respondent failed to demonstrate that no changes occurred to the material terms of sale after the contract date. Specifically, Habas contends that the CIT found that: 1) the sales documentation on the record (while incomplete) reflected variances in the material terms of sale after the contract date; and 2) the record reflected post-contract changes to the terms of sale (*i.e.*, quantities and payment terms) which did not warrant the use of contract date over invoice date.

In contrast, Habas asserts that the record of this case thoroughly documents that no changes (aside from small changes to quantity within contract-specified tolerance levels) occurred in the material terms of sale between order and shipment. Further, Habas notes that the issuance of a letter of credit by its U.S. customers further demonstrates the intention of both parties to be bound by the terms established in the contract.

According to the petitioners, the Department's decision to use invoice date as the date of sale for Habas in the preliminary results is in accordance with law and Department practice. As support for this assertion, the petitioners cite 19 CFR 351.401(i) and Preamble, 62 FR at 27349, which indicate that in identifying the appropriate date of sale, the Department will normally use the date of invoice, unless a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Moreover, the petitioners assert that the Department's use of invoice date is also consistent with CIT precedent. For example, the petitioners cite Thai Pineapple Canning Industry Corp., LTD, and Mitsubishi International Corp. V. United States, Court No. 98-03-00487, Slip Op. 00-17 (CIT Feb. 10, 2000), where the CIT held that the Department should only abandon the use of invoice date in "unusual situations." Moreover, the petitioners maintain that neither the law nor the regulations require the Department to use a date other than invoice date as the date of sale. Specifically, the petitioners cite Hornos Electricos De Venezuela, S.A. (Hevensa) v. U.S., Court No. 02-00452, (285 F. Supp. 2d 1353), Slip Op. 03-112 (CIT Aug. 29, 2003) (Hevensa v. U.S.), where the CIT held that the Department has the discretion to use a date of sale other than the invoice date, but is not required to do so, even if the material terms of sale are not subject to change.

The petitioners maintain that the Department generally is cautious about changing long-standing date of sale methodologies, due to concern over manipulation, double counting, or omitted sales. See *e.g.*, Oil Country Tubular Goods from Korea; Final Results of Antidumping Duty Administrative Review, 65 FR 13664 (Mar. 13, 2000), and accompanying Issues and Decision Memorandum at Comment 1 (OCTG from Korea). Moreover, the petitioners note that the Department has used invoice date as date of sale in all previous segments of this proceeding (see *e.g.*, Rebar Final 02-03 at Comment 5) and thus a change in the longstanding date of sale methodology would be inconsistent with the Department's established practice and procedures in this specific case.

Regarding this segment of the proceeding, the petitioners contend that Habas has not met its burden of proof in demonstrating that contract date better reflects the date on which the material terms of sale were established because it provided only one set of sample documents. According to the petitioners, under the Department's practice, a party seeking a date of sale other than invoice date bears the burden of proof. See OCTG from Korea at Comment 1 and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12933 (Mar. 16, 1999). The petitioners further note that this practice has been upheld by the Court. See Allied Tube and Conduit Corp. v. U.S., 132 F. Supp. 2d at 1090 (Allied Tube v. U.S.), where the Court upheld the Department's decision to use invoice date as date of sale because the respondent failed to sufficiently demonstrate that the material terms of sale were established on the purchase order date, rather than on the invoice date.

More importantly, however, the petitioners argue that Habas failed to prove that the material terms of sale for its U.S. sales were not subject to change after the date of contract, which the petitioners contend is a required element for overcoming the regulatory presumption. See Allied Tube v. U.S. and Hevensa v. U.S. Rather, the petitioners maintain that a legal opinion obtained by Habas pertaining to the binding nature of contracts and remedies for export transactions indicates that the conditions set forth in sales contracts (e.g., price) can be revised by mutual agreement of both parties. See Habas's December 10, 2004, supplemental response at Exhibit SA-9. Moreover, the petitioners claim that the record demonstrates that the price did, in fact, change after the contract date for the sample U.S. sale and this change was reflected in the U.S. sales listing in the form of a billing adjustment. The petitioners maintain that, although Habas failed to submit complete documentation detailing the reported billing adjustment, the salient issue remains that the material terms of sale were not established at the contract date.

Finally, while the petitioners agree with Habas that the Department may use different date of sale methodologies in each market, they argue that the record of this case does not support Habas's contention that sufficient differences existed between its U.S. and home market business practices to do so here. The petitioners argue that, while Habas suggests that the average lag time for its U.S. sales was substantial, its calculations were misleading because they were based on: 1) a weighted-average number of observations per invoice, rather than on the quantity shipped; and 2) incorrect contract dates (as discussed below). The petitioners assert that when using the correct contract dates, the average lag times for Habas's U.S. sales do not vary substantially from the average lag times of its home market sales during the POR. Further, the petitioners disagree that differences in the average order size and sales volume between home market and U.S. sales transactions are relevant and note that Habas did not provide any case precedent to support this claim. Regarding the one case actually cited by Habas,¹⁹ Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833 (June 16, 1998) (Pipe from Korea), the petitioners disagree that this case is on point because the respondent's sales involved long-term contracts with

¹⁹ We note that this case was cited in Habas' December 10, 2004, supplemental response at page S-4.

exceptionally long periods between contract date and invoice date, whereas in this case Habas's U.S. sales involved short-term contracts.

Department's Position:

We disagree with Habas that contract date is the appropriate date of sale for its U.S. sales during the POR. As noted by Habas, "date of sale" is defined by 19 CFR 351.401(i) as follows:

In identifying the date of sale of the subject merchandise or the foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Therefore, it is the Department's practice to treat the invoice date as the presumptive date of sale. According to the Preamble of the Department's regulations, the Department may choose a date other than invoice date if there is evidence that another date better reflects when the material terms of sale are established:

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

See Preamble, 62 FR at 27349.

While we agree with Habas that the Department has the discretion to determine the date of sale based on the facts in each administrative review segment, we disagree that the record of this proceeding shows that the material terms of sale (*i.e.*, quantity and value) were established at the time of the contract. Contrary to Habas's assertions, the information on the record demonstrates that there were, in fact, changes to the price specified in the contract subsequent to the contract date. Specifically, according to the sample U.S. sales documentation contained in Habas's August 16, 2004, Section A response at Exhibit A-7 and December 10, 2004, supplemental response at Exhibit SC-1, the amount paid by the customer was not the price specified in the contract; rather, the difference between the two amounts was reflected in the form of a billing adjustment in the U.S. sales listing. Because of the proprietary nature of this adjustment, we are unable to discuss it further here. See Habas's December 10, 2004, supplemental response at S-19 for further discussion.

Moreover, we find unconvincing Habas's assertion that the issuance of a letter of credit by its U.S. customers is binding in terms of the material terms of sale set forth in the sales contract. As demonstrated by the documentation on the record, post-contract changes to the material terms of sale (*i.e.*, price) can and did occur. Consequently, we do not find that the material terms of sale for Habas's U.S. sales were established at the contract date. Thus, we have continued to use Habas's invoice date as the date of sale for its U.S. sales, in accordance with our practice. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 FR 53127 (Sept. 9, 2003) (Rebar Final 01-02); and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (Oct. 30, 2002).

Nonetheless, we agree with Habas that contract date may be the appropriate date of sale in cases where there are no changes to the material terms of sale specified in the contracts. Therefore, we examined the data on the record for ICDAS, the only other respondent which provided contract date information to the Department. According to this information, there were no changes outside the tolerances specified in the contracts between the quantities shown on the contracts and the actual quantities shipped.²⁰ Therefore, for the final results, because we find that ICDAS has demonstrated that there were no changes outside the specified contract tolerances for each POR U.S. sale, we have revised calculations to use contract date as the date of sale for all of its U.S. sales.

Comment 7: Ministerial Errors in the Preliminary Results

The petitioners contend that the Department made certain ministerial errors in the preliminary results. Specifically, the petitioners contend that the Department failed to: 1) account for interest revenue in the calculation of Diler's net home market prices; 2) appropriately deduct the revised FOH amount from COM when calculating VCOM for Habas; 3) appropriately apply an adjustment for differences in LOT for ICDAS; 4) convert FOH costs from kilograms to metric tons in calculating the difference-in-merchandise (difmer) adjustment for ICDAS; and 5) account for Demir Sanayi's G&A expenses in the calculation of ICDAS's COP.

The respondents did not comment on this issue.

²⁰ We note that we verified the accuracy of this information during the course of this proceeding. See the April 1, 2005, memorandum from Irina Itkin, Alice Gibbons, and Brianne Riker to Louis Apple entitled, "Verification of the Sales Questionnaire Responses of ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars (Rebar) From Turkey" ("ICDAS Sales Verification Report") and ICDAS's December 23, 2004, supplemental response at Exhibit SA-3.

Department's Position:

We agree that we made errors 1 through 4 noted above, and we have corrected them for purposes of our final results. However, regarding the appropriate match of sales at the same LOT for ICDAS (item 3 above), we note that this error had no impact on ICDAS's final margin because there were matches at the same LOT for all sales and no LOT adjustment was necessary. Also, regarding the calculation of ICDAS's difmer adjustment (item 4 above), we note that this error also had no impact on ICDAS's final margin because all of ICDAS's U.S. sales matched to identical products; therefore, a difmer adjustment was not necessary. For details of these calculations, see the November 2, 2005, memorandum from Brianne Riker to the file entitled "Calculations Performed for Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S. and Diler Dis Ticaret A.S. (collectively "Diler") for the Final Results in the 2003-2004 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey" ("Diler Final Calc Memo 03-04"); the "Habas Final Calc Memo 03-04;" and the "ICDAS Final Calc Memo 03-04."

Regarding item 5, while we agree with the petitioners that we inadvertently excluded Demir Sanayi's G&A expenses from the preliminary calculations, we disagree that we should include these expenses in the calculation of COM. Rather, consistent with the methodology used in the prior segment of this proceeding, we find that it is appropriate to include these expenses in the calculation of ICDAS's COP because they are G&A expenses of the collapsed entity, rather than part of the COM. We have corrected the computer programming language for ICDAS accordingly. See the "ICDAS Final COP/CV Calc Memo 03-04" at 4.

Company-Specific Issues

A. Colakoglu

Comment 8:___Cost of Billets for Colakoglu

In the preliminary results, the Department relied on the cost of billets reported by Colakoglu. The petitioners allege that the reported figures cannot be correct because the per-ton cost of billet at the melt shop stage is lower than the per-ton cost of billet reported for the finished rebar production. The petitioners conclude from this fact pattern that Colakoglu reported a negative yield loss rate, signifying that the company actually gained material between the melt shop and the rolling mill stages. According to the petitioners, this result is nonsensical and thus Colakoglu clearly understated the per-unit cost of billet used in the rolling mill. Consequently, the petitioners argue that the Department should increase Colakoglu's cost of billets for the final results by the percentage stated on page 46 of their August 2, 2005, case brief.

Colakoglu disagrees that it understated its billet cost, arguing that the difference cited by the petitioners is attributable to the distinction between: 1) the current cost to produce billets; and 2) the cost of billets withdrawn from inventory and consumed in producing rebar. Specifically, Colakoglu points out that it reported the cost of billets consumed in the rolling mill during the

POR as shown in its books and records, and it disclosed this fact in its questionnaire response. According to Colakoglu, given that the Turkish inflation rate during the POR was nearly 20 percent, it is not surprising that billets consumed from inventory would be valued at slightly less than the current cost of producing them. Colakoglu therefore asserts that its reported billet costs are correct and should be used for the final results.

Department's Position:

We have continued to accept Colakoglu's reported billet costs for the final results. Because Turkey did not experience significant inflation during the POR, we did not require respondents to report costs on a current cost basis as we have in prior segments of this proceeding. Given that there may be a lag between the time a billet is produced and the time it is consumed in the production of rebar, it is reasonable that the cost of a billet when it is produced will differ from the cost of that billet when it is removed from inventory and introduced into rebar production. Therefore, we find that the petitioners' proposed adjustment is inappropriate and we have continued to use Colakoglu's reported billet costs for the final results.

Comment 9: *Financing Expenses for Colakoglu*

In its questionnaire response, Colakoglu based its reported financing expenses on the amounts reflected in its audited company-specific financial statements, and we accepted this calculation for purposes of the preliminary results. The petitioners argue that doing so was improper because Colakoglu's auditors gave these financial statements a qualified opinion, based on the fact that they do not consolidate the results of the company's subsidiaries and thus are in violation of international accounting standards. Indeed, the petitioners note that the auditors held that these statements "do not present fairly the financial position of the company"; from this, the petitioners conclude that Colakoglu failed its audit and as a result its financial statements cannot be relied upon.

Moreover, the petitioners contend that Colakoglu failed both to comply with the Department's explicit instructions to report its financing expenses on a consolidated basis and to notify the Department that it was not doing so. The petitioners assert that, as submitted, Colakoglu's information cannot be used without undue difficulty since the Department cannot reconstruct a consolidated interest expense ratio based upon unconsolidated amounts. Therefore, the petitioners maintain that Colakoglu impeded the investigation and as a result the Department should resort to adverse inferences in calculating Colakoglu's interest expenses. Specifically, the petitioners argue that the Department should use the POR average short-term interest rate reported by Colakoglu in its August 16, 2004, Section B response.

Colakoglu disagrees that an adverse inference is appropriate here. According to Colakoglu, the Department's practice is explicitly set forth in the standard antidumping duty questionnaire, which requires companies to calculate financial expenses based on the financial statements "at the highest consolidation level available." Colakoglu contends that it complied with these instructions because: 1) it was not a member of a consolidated group of companies in 2003; and

2) therefore, its company-specific statements represent statements at the highest consolidation level.

According to Colakoglu, it can only provide information to the Department which is in its possession, and that any requirement that it do otherwise would be both unreasonable and contrary to established case law. See Olympic Adhesives, Inc. V. U.S., 899 F. 2d 1565 (Fed. Cir. 1990). In any event, Colakoglu maintains that the Department would only rely on financial statements which had been audited, and thus it implies that the Department would never rely on artificial financial statements prepared solely for purposes of this administrative review.

Moreover, Colakoglu disagrees with the petitioners that the auditor's qualified opinion signifies that Colakoglu failed its audit. Colakoglu notes that an auditor's report can contain one of three opinions: an unqualified opinion, a qualified opinion, or an adverse opinion. Colakoglu asserts that only the latter term denotes failure (*i.e.*, that the underlying financial statements are unreliable). Colakoglu states that the auditor's opinion was not adverse, but merely indicated that the financial statements were unconsolidated and as a result held that they were not fully consistent with international accounting standards. However, Colakoglu asserts that this in no way discredits the accuracy of its financial statements. Indeed, Colakoglu asserts that Turkish accounting law forbids a Turkish company from consolidating its financial statements.

In addition, Colakoglu disagrees that it misled the Department on this issue, asserting that: 1) the audited financial statements submitted in its Section A response clearly indicated that they were not consolidated; and 2) Colakoglu similarly did not provide (or prepare) consolidated statements in the course of the prior administrative review (*i.e.*, the 2002-2003 Administrative Review).

Finally, Colakoglu disagrees with the petitioners' suggestion that the Department use the average short-term interest rate reported for home market sales. Colakoglu notes that it would be inappropriate to use this rate because it is calculated as a percentage of the company's loan balances; financing expenses, on the other hand, are expressed as a percentage of the company's cost of sales.

Department's Position:

The Department's longstanding practice with regard to financing expenses is to base net financing expenses on the full-year net interest expense and cost of sales from the audited fiscal year financial statements at the highest level of consolidation which correspond most closely to the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (Dec. 29, 1999) (Steel Plate Products from France). This practice has been upheld by the CIT. See Gulf States Tube Division of Quanex Corporation v. United States, 981 F. Supp. 630, 647-648 (CIT 1997) (Gulf States Tube Division v. U.S.).

However, in the instant case we are unable to follow the Department's general practice of using the financing expenses drawn from consolidated financial statements because no such consolidated financial statements exist. We instructed Colakoglu in our May 13, 2004, antidumping duty questionnaire to calculate its financial expense ratio based on fiscal year financial statements "of the highest level of consolidation available." See the May 13, 2004, questionnaire at D-14. Colakoglu provided its own expenses based on its company-specific audited financial statements. See Colakoglu's December 31, 2004, supplemental response at Exhibit S-3, where Colakoglu provided its audited fiscal year 2003 financial statements. At the time of this submission, the petitioners did not question whether consolidated financial statements existed, and there was no independent evidence on the record to suggest that they did in fact exist. Indeed, we note that the petitioners raised this issue for the first time in their August 2 case brief.²¹

In Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 68 FR 41303 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 15 (Mushrooms from India), the Department found that when consolidated audited financial statements do not exist and are not easily prepared, it is appropriate to base the interest expense calculation on the audited financial statements at the highest level of consolidation available to the respondent. See also, Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review, 65 FR 60406 (Oct. 11, 2000), and accompanying Issues and Decision Memorandum at Comment 2; and DRAMs from Korea at 58 FR 15475. Thus, consistent with the approach in Mushrooms from India and due to facts in this case, we have based financing expenses on Colakoglu's company-specific audited financial statements.

Further, we disagree with the petitioners that a qualified auditor's opinion renders Colakoglu's financial statements unuseable. We find that the qualification in no way impugns the reliability of the underlying data because it does not indicate that the company-specific data is distorted or that Colakoglu failed its audit; rather, the opinion merely states that the financial information presented on the company-specific statements may not fairly represent the experience of the Colakoglu "group" as a whole. We also find that it would be inappropriate for Colakoglu to consolidate its own data for the sole purpose of preparing a response to the Department's questionnaire. See DRAMs from Korea, 58 FR at 15475, where the respondent offered to consolidate its own financial statements and the Department found that this offer did "not overcome the fact that substantial audit procedures would have been required before the Department could be assured that the statements were adequately presented."

Finally, we disagree with the petitioners that we should apply adverse facts available (AFA) in calculating Colakoglu's interest expenses. The Department's regulations at 19 CFR 351.308(a) state:

²¹ We note that the petitioners' case brief was originally submitted on June 21, 2005, but was revised and resubmitted on August 2, 2005, in order to address issues related to: 1) proper bracketing of certain business proprietary information; and 2) new and untimely information.

The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party “has failed to cooperate by not acting to the best of its ability to comply with a request for information,” the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

We find that it would be inappropriate to rely on AFA in the instant case because: 1) the information necessary to calculate Colakoglu’s interest expense ratio is on the record; and 2) Colakoglu cooperated to the best of its ability in this proceeding by providing its financial statements consolidated to the highest level available pursuant to the instructions in the Department’s May 13, 2004, questionnaire. In this case, the use of audited company-specific financial statements provides the best representation of Colakoglu’s financing costs. Therefore, we have continued to compute Colakoglu’s financing expenses using its company-specific financial statements for purposes of the final results.

B. Diler

Comment 10: Movement Expenses Provided by an Affiliate of Diler

In its questionnaire response, Diler reported that the Diler Group established a company, Faruk Denizcilik Sanayi Ve Ticaret A.S. (Faruk), in 2003 in order to oversee all shipping and chartering services for the Group. This company provided port services for Diler’s U.S. sales during the POR. In this review, Diler reported international freight expenses for U.S. sales based on the amount charged by unaffiliated international freight suppliers; these suppliers paid Faruk for port services and then included Faruk’s charges in the total amounts invoiced to Diler. See Diler’s December 27, 2004, supplemental response at S-2.

The petitioners assert that the Department should include an appropriate portion of Faruk’s costs in Diler’s indirect selling expenses because it is an affiliated company. The petitioners contend that this action is consistent with that taken in Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820, 30827-28 (June 8, 1999) (SSSS from France), where the Department included in indirect selling expenses an allocated portion of the selling expenses of an affiliate which was formed to develop new products and improve the respondent’s sales. Specifically, the petitioners argue that because Faruk’s sole purpose is to assist other members of the Diler Group with shipping logistics, the Department should allocate Faruk’s full costs to all members of the Diler Group, based on the relative sales of each Group company.

In response, Diler asserts that it has completely captured the amounts charged by Faruk to Diler in either: 1) Diler’s reported COM (for the shipping services associated with the raw material inputs); or 2) its reported movement expenses (for the shipping services associated with the sale of finished goods). According to Diler, because these shipping services represent an insignificant

portion of the company's cost of goods sold (COGS), section 773(f)(3) of the Act (i.e., the major input rule) does not apply here. Therefore, Diler argues that the Department should continue to rely on these costs as reported for the final results.

Department's Position:

We disagree with the petitioners that we should include a portion of Faruk's costs in Diler's indirect selling expenses. We find the petitioners' reliance on SSSS from France to be misplaced because the affiliate in that case was performing selling functions (e.g., developing new products and improving the respondent's sales), not providing freight services. See SSSS from France, 64 FR at 30828.

We agree with Diler that it included the price charged by Faruk in its reported movement expenses. However, we have reexamined the data on the record with respect to these prices and find that the price charged by Faruk differed depending on whether the charge was ultimately paid for by Diler or an unaffiliated party. Generally, the Department will use prices set by affiliates as a basis for NV, COP, and CV only if the transactions are at arm's-length. In determining whether to use transactions charged by affiliated parties, our practice is to compare the transfer price to: 1) prices for the same service paid by the respondent to unaffiliated parties or, if no such transaction occurred, 2) prices charged to other unaffiliated parties for the same service. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 70 FR 54359 (Sept. 14, 2005) and accompanying Issues and Decision Memorandum at Comment 3. Upon examining the evidence on the record, we found that for each term of delivery associated with Diler's U.S. sales, Faruk's charges differed significantly. Specifically, where Diler paid the shipping costs, we found that the price charged was not at arm's length. Therefore, in accordance with our practice and section 773(f)(2) of the Act, we have increased Faruk's charges to Diler by the amount necessary to offset this difference for the final results. See the "Diler Final Calc Memo 03-04" for a discussion of this adjustment.

Finally, we agree with Diler that it captured the amounts charged by Faruk in its reported COM. However, we note that there is no information on the record that indicates whether these freight services were provided at arm's length prices. We have examined the data on the record regarding the percentage of services provided by Faruk to the Diler Group companies as compared to the COGS and determined that if we were to make an adjustment to COM similar to that described above using the same percentage increase as facts available, it would be insignificant within the meaning of 19 CFR 351.413. Therefore, we have accepted these costs as reported for purposes of the final results.

Comment 11: *Affiliated Party Billet Purchases for Diler*

During the POR, Diler's affiliated factory Yazici purchased billets from Korfez, an affiliated reseller. Korfez purchased these billets from an unaffiliated supplier. The petitioners argue that because of certain common ownership and management between Diler/Yazici and Korfez, these companies should be considered affiliated under section 771(33) of the Act. As a result, the

petitioners argue that the transactions disregarded rule should be applied to Yazici's billet purchases from Korfez, and the Department should value these purchases at the higher of the transfer or market price at a minimum.

However, the petitioners prefer that the Department value these billets using AFA based on a finding that Diler failed to cooperate to the best of its ability with respect to these transactions. Specifically, the petitioners allege that Diler: 1) skirted the requirement that it demonstrate the arm's-length nature of its transactions with Korfez, based on its claim that the two entities are not affiliated; 2) appears not to have reported Korfez's fully-absorbed costs for the transactions; 3) misrepresented its transactions with Korfez by stating that there were no billet sales between Yazici and Korfez, even though these sales were shown on Korfez's income statement and Yazici's records show that the transactions between the two parties represented a significant proportion of Yazici's production; and 4) failed to report these billet purchases at all, given that Diler based its billet costs on those incurred entirely at its own melt shop. As AFA, the petitioners argue that the Department should assign the highest reported billet cost for the billets purchased by Yazici from Korfez.

Diler disagrees that it failed to cooperate to the best of its ability in this case, and thus it contends that the use of AFA is unwarranted. According to Diler, the petitioners' arguments are based on either statements taken out of context or other misrepresentations of the facts on the record. As a threshold matter, Diler contends that it never claimed an absence of affiliation between itself and Korfez. Rather, Diler asserts that it provided the business agreement in effect with Korfez in its Section A response, as well as Korfez's financial statements and all other documentation requested by the Department.

Diler similarly disagrees with the petitioners' allegation that it failed to disclose billet sales between Yazici and Korfez. Specifically, Diler maintains that it did in fact report these transactions. According to Diler, its response clearly indicated that the statement referenced by the petitioners related to billets produced by Yazici and provided to Korfez under a tolling arrangement. Moreover, Diler asserts that, contrary to the petitioners' assertions, it not only included Korfez's billet purchases in its reported billet costs, but it also provided a detailed narrative explanation and complete documentation for these transactions. Finally, Diler asserts the petitioners significantly overstated the magnitude of these transactions because they failed to take into account Yazici's own rebar production before computing their production percentage.

Regarding the petitioners' argument that the Department should apply the "transactions disregarded rule" (by taking the higher of the transfer or market price), Diler asserts that this is unnecessary. Specifically, Diler notes that in this case the transfer price is the same as the market price for billets, given that Korfez is simply a reseller of billets and it simply passed its market-based purchase price on to Yazici. Diler asserts that there is no basis for accepting the petitioners' further argument that the Department should increase Korfez's cost because the petitioners provided no evidence that the billet purchases constituted a major input in the production of subject merchandise. Diler maintains that these purchases are not, in fact, a major

input because they constituted only a small percentage of the total reported COM. Therefore, Diler argues that the Department should accept these amounts as reported for the final results.

Department's Position:

Diler purchased billets from Korfez, an affiliated reseller. Korfez purchased these billets from an unaffiliated supplier. See Diler's February 8, 2005, Section D supplemental response at 5 and March 31, 2005, Section D supplemental response at 12. Based on the evidence on the record, we find that Diler and Korfez are affiliated companies and that transactions between them should be analyzed to ensure they occurred at arm's-length prices.

As an initial matter, however, we disagree with the petitioners that Diler misrepresented its relationship with Korfez or that the value of these transactions should be based on AFA. As part of its initial Section A response, Diler characterized its transactions with Korfez as affiliated and provided the service contract between Diler and Korfez. See Diler's August 16, 2004, Section A response at A-8 and Exhibit 4. In addition, Diler provided Korfez's trial balance which illustrated that Korfez recorded these billet sales as "sales to affiliated company." See Diler's February 8, 2005, Section D supplemental response at Exhibit 23. Thus, we find that Diler did not mislead the Department regarding its affiliation with Korfez.

We also disagree with the petitioners that Diler misrepresented its transactions with Korfez by making a statement that there were no billet sales between Diler and Korfez. The record shows that this statement was referring to the billets produced only by Diler and not the billets purchased through Korfez. See Diler's March 31, 2005, Section D supplemental response at 12, footnote 2. Thus, we find that the petitioners have taken Diler's statements out of context. Similarly, we disagree with the petitioners that costs of the billet purchases made through Korfez were not included in the reported costs. Specifically, the Department was able to identify through Diler's cost reconciliation that these purchased billets were included in the reported raw material costs. Thus, record evidence clearly demonstrates that these billet costs were included in the reported costs. See Diler's February 8, 2005, Section D supplemental response at Exhibit 40 and March 31, 2005, Section D supplemental response at Exhibits 56 and 57.

Because Korfez is not a producer of the billets, but merely a reseller, we also disagree with the petitioners that the affiliated input purchases at issue are subject to the major input rule as defined in section 773(f)(3) of the Act. Section 773(f)(3) of the Act specifically refers to affiliated producers of the input.

Nonetheless, section 773(f)(2) of the Act allows the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the value in the market under consideration. The Department's practice in conducting this analysis has been to compare the transfer price for the inputs charged by the affiliate to the market price for the same input. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (Mar. 31, 2005) and accompanying Issues and Decision Memorandum at Comment 12 (PET Resin from Indonesia) and Notice of

Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (Jan. 23, 2002) and accompanying Issues and Decision Memorandum at Comment 35 (Stainless Steel Bar from Germany). Based on the evidence on the record, Diler paid Korfez the same price that Korfez paid to an unaffiliated billet supplier. See Diler's March 31, 2005, Section D supplemental response at Exhibit 60. Nevertheless, it is reasonable to believe that Korfez would have incurred certain service costs related to the acquisition and sale of these billets as well as transportation costs (from Korfez to Diler). Therefore, these costs must be taken into account in order to calculate a market value for the comparable transaction between Diler and Korfez. In this case, we determined that the market price should include Korfez's billet acquisition cost plus its selling and G&A expenses. See PET Resin from Indonesia and Stainless Steel Bar from Germany. Because the transfer price was below the market price for the input, for the final results, we adjusted Diler's reported costs to reflect the market price of the purchased billets from Korfez. See the "Diler Final COP/CV Calc Memo 03-04."

Comment 12: Edge and Defective Rebar Offsets to Cost of Manufacturing (COM) for Diler

As a result of the production of rebar, Diler generates cut-off ends of rebar which are described as edges and defective rebar. Diler either sells the edges and defective bar or recycles them as a raw material in the production process. In its cost response, Diler claimed an offset to production costs for the value associated with the generation of edges and defective bar. In order to determine the amount of the scrap offset, Diler multiplied the quantity of edges and defective bar generated by a per unit value.

The petitioners argue that Diler's reported edges and defective bar offsets were deficient in several respects and that therefore, the Department should deny Diler's scrap offsets. The petitioners state that the production quantity of edges and defective bar was based on standard measures and the reported offsets were calculated based on the standard quantities of edges and defective bar produced during the POR. The petitioners claim that the Department has consistently rejected such estimates, citing Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 7 (Wire Rod from Germany) (where the Department denied the respondent's estimated freight expenses due to the lack of support for their accuracy).

The petitioners also contend that Diler's reported edges and defective bar offsets did not represent the inventory values used in the normal accounting system. The petitioners argue that Diler assigned costs to internally-consumed edges and defective bar based on the moving average inventory value in the normal course of business. However, the petitioners claim that the offsets reported in the cost response were based on a different valuation methodology in which the edges were valued at the highest scrap purchase price and the defective bars were valued at the average selling price. Thus, the petitioners argue that Diler's departure from its normal accounting records in preparing its response resulted in an overstated scrap offset.

Furthermore, the petitioners contend that Diler's scrap inventory valuation methodology caused distortion in the reported costs. The petitioners argue that, because Diler reintroduced a certain portion of the generated defective bar into the production process during the POR, the generated defective bar should have been valued at the scrap price instead of the average selling price of defective bar. The petitioners also assert that Diler's valuation of generated edges was flawed because Diler valued edges at the most expensive scrap purchase price and this methodology was supported only by the representations from its own technical personnel. The petitioners contend that the Department should not accept this representation since it has previously ruled that the representations of a company's own management cannot be accepted as the sole support. As evidence of this assertion, the petitioners cite Final Determination of Sales at Less than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (Feb. 26, 2002), and accompanying Issues and Decision Memorandum at Comment 20 (Greenhouse Tomatoes from Canada). Thus, the petitioners argue that Diler failed to meet its burden of justifying the claimed scrap offsets and the Department should deny its scrap offset from the reported costs for the final results.

Diler contends that the petitioners' arguments are without merit because Diler's reported edges and defective bar values were taken directly from its audited books and reflected the actual value of scrap produced and entered into inventory during the POR. First, Diler argues that the petitioners misunderstood its accounting system with respect to the reported edges and defective bar offset. Diler contends that the statement quoted by the petitioners was related to the costs assigned to edges and defective bar that were withdrawn from inventory for producing billets and was not related to the generation of edges and defective bar. Diler explains that: 1) the inventory values assigned to the production of edges and defective bar reflect the market price; 2) the produced defective bar and edges were either sold or put into the scrap stockyard; 3) the items that were put into the scrap stockyard were commingled with edges and defective bar produced in prior months and thus, the moving average inventory value of these would not only reflect the market price of that month but also reflect the market price of past months within the moving average; and 4) when the edges and defective bar were subsequently pulled from the stockyard for rebar production, the cost assigned would be based on the moving average inventory value. According to Diler, the record demonstrates that the reported values for edges and defective bar production were taken directly from its monthly cost accounting reports which were part of its audited books and records. Thus, Diler argues that, rather than relying on the cost of edges and defective bar withdrawn from inventory and used in the production of billets, the Department should instead use the value of edges and defective bar produced in rebar production and entered into inventory, as maintained in its audited financial statements, to offset the production cost of rebar.

Diler further contends that its scrap inventory valuation methodology did not cause distortion in the reported costs. The respondent states that its reported edge and defective bar valuation was based on its normal books and was not only consistent with Turkish GAAP but was also consistent with U.S. GAAP. Specifically, Diler notes that, in accordance with the Turkish and U.S. GAAP requirement to use the lower of cost or market price for recording inventory, Diler assigned the value to these by-products based on the market price. Diler claims that the slight difference in the value between entries into inventory and the withdrawal from inventory was due

to the fact that in periods where material input prices rise, such as in this POR, the inventory value assigned to entries into inventory would be higher than the inventory value of the products sitting in inventory and pulled from inventory in subsequent months. Thus, Diler maintains that its inventory values did not demonstrate “distortion” as petitioners claim, but instead demonstrated actual fluctuation in inventory values.

Regarding its estimated production figures, Diler argues that the estimated edges and defective bar production figures were reflective of actual production during the POR. Specifically, Diler maintains that the record illustrates that the ending inventory figures which were derived using Diler’s estimated edges and defective bar production matched the actual physical ending inventory.

Finally, Diler asserts that it has cooperated fully and to the best of its ability in this review and therefore, there is no valid basis for denying its scrap offsets.

Department’s Position:

In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on the costs maintained in the respondent’s normal books and records, provided such records are kept in accordance with the GAAP of the producing country and reasonably reflect the costs associated with the production and sale of the merchandise. In the normal course of business and record keeping, Diler uses technical standards to derive the quantity of edges and defective bar generated. Diler’s normal books and records value the generated defective bar and edges at the average selling price of defective bar and the most expensive scrap purchase price for edges (*i.e.*, market price). These items are either sold or transferred to the scrap inventory stockyard at the same value as when they are generated. The defective bar and edges generated in the current month, which are valued at the current month’s market price, are commingled with defective bar and edges generated from prior months, which are valued at a past month’s market price, and are valued in inventory at a moving average value. When the defective bar and edges are pulled from the inventory stock yard (*i.e.*, input material for rebar production), they are valued at the moving average inventory value of the consumed defective bar and edges. In periods of rising material input prices, such as during this POR, the value assigned to scrap entries into inventory should be higher than the requisition value of the scrap pulled from inventory for consumption in billet production. Diler uses a consistent inventory valuation method (*i.e.*, market price) for its generated and consumed defective bar and edges in its normal books and records which are maintained in accordance with Turkish GAAP. Further, evidence on the record indicates that the offset calculation method used in the reported costs was identical to the scrap valuation method used in its normal books and records. See Diler’s February 8, 2005, Section D supplemental response at Exhibit 27 and March 31, 2005, Section D supplemental response at Exhibit 62. Because Diler’s reported scrap offset valuation method values the scrap based on its market value as of the month generated and is the same as the value assigned to the scrap entering inventory, we find its reporting method to be reasonable.

We disagree with the petitioners that the reported quantity of scrap generated cannot be relied upon because it is based on estimated defective bar and edges generation. In the normal course of business, Diler performs monthly defective bar and edges inventory counts and prepares a monthly defective bar and edges inventory reconciliation to adjust the standard quantity generated to actual. In addition, a formal defective bar and edges inventory count is performed at the end of the fiscal year to ensure that the scrap offset calculation used in the normal books and records is accurate for annual financial reporting purposes. Specifically, based on our review of the monthly POR defective bar and edges inventory reconciliation, we find that the ending physical inventory using the standard defective bar and edges generation quantities matches the actual physical ending inventory counts whose values traced to the financial statements. See Diler's February 8, 2005, Section D supplemental response at Exhibit 27 and March 31, 2005, Section D supplemental response at Exhibit 62. Thus, based on the record evidence, we have determined that Diler's reported defective bar and edges offset quantities reasonably reflect the company's actual experience and do not distort the reported costs.

We find that the petitioners' reliance on Greenhouse Tomatoes from Canada is unpersuasive because in that case, the respondent's management was not able to produce any record, report, or engineering studies to substantiate the cost allocation factors. In contrast, in this case, Diler's management provided a table illustrating: 1) the technical specifications of edges; and 2) the correlation between these specifications and the market values. See Diler's March 31, 2005, Section D supplemental response at Exhibit 63. Similarly, we find the petitioners' reliance on Wire Rod from Germany misplaced because in that case, the Department denied the respondent's reported estimated freight expense due to several deficiencies including lack of system accuracy and the lack of correlation between estimated freight expenses and the actual expenses incurred during the year. Those deficiencies are not present in the instant case. Therefore, for the final results, we have continued to use Diler's reported defective bar and edges offsets because we find that they are reliable as reported.

Comment 13: Offsets to General and Administrative (G&A) Expenses for Diler

For purposes of the preliminary results, the Department disallowed certain income items reported as offsets to Diler's G&A expenses because Diler failed to provide an explanation for them. Diler argues that the Department should reverse this decision for the final results because: 1) the items in question related to property and vehicle rental income; 2) the record contains a complete explanation of these offsets; 3) it is the Department's standard procedure to offset G&A expenses by these types of items; and 4) given that Diler has cooperated in this proceeding, adverse inferences are not appropriate.

Specifically, Diler argues that it provided financial account details for each item explicitly identified in the Department's supplemental questionnaires, with English translations for each account. Diler asserts that as part of this response it translated the Turkish account headings for rental income related to properties and vehicles. Diler further asserts that it provided additional details only for those accounts with significant expenses/incomes or where the English translations might not have provided clear explanations of the nature of the items. According to

Diler, the descriptions of “property rental income” and “vehicle rental income” were sufficiently clear as to reveal the exact nature of the income booked into the financial accounts.

Moreover, Diler maintains that the incomes in question are both minor in nature and relate to the general operations of the company (*i.e.*, they are not a separate line of business). According to Diler, under similar circumstances the Department has allowed these types of incomes as offsets to G&A expenses. For example, Diler cites the final results in the most recently completed segment of this proceeding (*see Rebar Final 02-03* at Comment 13, where the Department allowed Diler’s claimed offsets related to the same general ledger account), as well as *Swine from Canada* at Comment 62, where the Department allowed rental income as an offset to G&A expenses, stating that the rental activity was a minor activity not related to a separate line of business, but rather to the general operations of the company.

In any event, Diler asserts that it provided adequate support for the offset items allowed in the preliminary results. Therefore, Diler argues that the petitioners’ argument (*see* below) that the Department should disallow all of Diler’s claimed offsets is not only based on a misunderstanding of the Department’s long-standing policy, but it also is contrary to law. Specifically, Diler maintains that the Department should continue to allow offsets for: 1) provisions that are no longer required because Diler included in G&A both the income and expenses related to this account and it is the Department’s practice to include in COP accruals which are recognized in a respondent’s financial statements (*see Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13836 (Mar. 28, 1996)); and 2) management fees earned by Diler Holding because failure to include this income would result in double-counting of the associated expenses (*i.e.*, once as an allocation of Diler Holding’s actual expenses and again as an expense recorded by Diler and Yazici upon receipt of a Diler Holding management fee invoice).

Finally, Diler contends that the Department should also reject the petitioners’ proposal to disallow Diler’s offset items on the grounds that Diler did not include the corresponding costs in its reported cost data. According to Diler, the Department’s questionnaire instructs companies to compute G&A expenses on an annual basis as a ratio of total company-wide G&A expenses divided by total COGS. Diler notes that, while the underlying expenses associated with the income items in question may not be in the reported costs, these expenses do form part of the total COGS used as the denominator of G&A calculation. Thus, Diler asserts that accepting the petitioners’ proposed methodology would be tantamount to allocating either all G&A expenses to subject merchandise or all income items to non-subject products.

The petitioners disagree with Diler. Specifically, the petitioners contend that, because Diler failed to provide an explanation for several items, the Department should follow through and exclude all of Diler’s claimed offsets to G&A. The petitioners maintain that, by trying to “salvage” portions of those offsets, the Department is engaging in sheer guesswork. Moreover, the petitioners contend that the burden of supporting an offset claim is borne by the party making the claim and Diler failed to meet that burden. Nonetheless, the petitioners contend that, were the Department to attempt to evaluate each offset separately, the result would be the same

because the offsets are either: 1) unrelated to the reported COP (e.g., rental and sales income on vehicles, rental income on vessels, etc.); 2) related to prior period charges (e.g., provisions no longer required); or 3) associated with income earned by the parent company (e.g., fees collected from Diler Holding's subsidiaries). Regarding the latter point, the petitioners argue that the Department's practice is to allocate the expenses of the affiliate, and not its income, to the responding company.

The petitioners argue that Diler's reliance on Swine from Canada is misplaced. According to the petitioners, in Swine from Canada the Department found that the rental income derived from land was a "minor activity not related to a separate line of business," which merely signified that the costs of that activity were not reported separately from its core activity (i.e., production of subject merchandise). In this case, the petitioners note that Diler separated the costs associated with its "other" activities from its core activity and recorded them in separate COGS accounts which were not included in the reported costs. Further, the petitioners assert that the Department's definition of "minor" activity normally implies that the distortion that might be caused by the inclusion of the net results of that activity is not significant enough to justify additional efforts to identify and separate the costs and revenues generated by that activity. Thus, the petitioners argue that the Department should consider property and vehicle rental activities as a separate line of business unrelated to the general operations of the company. According to the petitioners, because Diler included the expenses corresponding to "other" activities in separate COGS accounts, yet included the related income as an offset to G&A expenses, it created a fundamental flaw in the allocation methodology based on the matching principle. The petitioners assert that Diler's methodology not only reduced the G&A numerator, but also simultaneously diluted the denominator. Thus, the petitioners contend that the Department should disallow these offsets for purposes of the final results.

Department's Position:

The Department's established practice in calculating the G&A expense rate is to include only those items that relate to the general operations of the company as a whole. See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (Mar. 24, 2004), and accompanying Issue and Decision Memorandum at Comment 10 (Silicomanganese from Brazil). Consequently, in determining whether it is appropriate to include or exclude particular income or expense items from the G&A expense rate calculation, the Department reviews the nature of each item and its relationship to the general operations of the company.

In the first Section D supplemental questionnaire dated January 11, 2005, the Department requested that Diler explain and provide a detailed schedule for all non-operating income items included in its G&A expense calculation. In response to this request, Diler provided schedules with English translations of each account title without any explanation. See Diler's February 8, 2005, Section D supplemental response at Exhibit 46. Without explanations from Diler, the Department was not able to determine the precise nature of the items or how each non-operating item was related to the company's general operations. Thus, the Department repeated its request that Diler explain and justify the inclusion of each operating income offset to G&A expenses in

the second Section D supplemental questionnaire dated March 10, 2005. In response, Diler provided explanations only for certain items, relying instead on its submitted English translations of the account titles for the remaining income amounts. See Diler's March 31, 2005, Section D supplemental response at 30-34.

In order to perform an accurate dumping analysis, it is imperative that the Department obtain detailed explanations for all non-operating income items with which the respondent wishes to offset G&A expenses. Diler's provision of English translations of account titles alone fails to satisfy the Department's need to understand in detail to what each income item relates. Moreover, the burden of proof to substantiate and document these adjustments is on the respondent making a claim for an offset. See Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6305, 6314 (Feb. 9, 1999). Since Diler failed to provide the requested explanations and justification for each item (e.g., property and vehicle rental income, etc.) after the Department twice requested that it do so, the necessary information is not on the record to evaluate whether each offset is appropriate.

Specifically, regarding the items disallowed in our preliminary results, we agree with the petitioners that Diler's G&A expense rate calculation method may have reduced the numerator while it also simultaneously diluted the denominator. That is, the COGS denominator may potentially have included the expenses corresponding to the other activities, while the related income was included as an offset to G&A expenses. Generally, both the non-operating expenses and the corresponding non-operating income should be included in the G&A numerator in order to achieve symmetry. It is inappropriate to include non-operating income in the numerator of the G&A ratio calculation and report the associated non-operating expenses in the COGS denominator. Since Diler failed to provide the requested explanations and justifications, it is unclear where these corresponding expenses were included (i.e., in the COGS denominator or G&A numerator). Thus, for the final results, the Department disallowed those offsets where Diler failed to sufficiently explain and justify its claim. See the "Diler Final COP/CV Calc Memo 03-04."

However, we disagree with the petitioners that we should disallow all of the claimed offsets because Diler did not include the corresponding expenses in the reported costs. As stated above, the Department's objective for calculating the G&A expense rate is to include only those items that relate to the general operations of the company as a whole.²² Thus, the claimed offsets to the G&A expenses do not necessarily have to be linked to the production of subject merchandise (see Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (Oct. 15, 2002) and accompanying Issues and Decision Memorandum at Comment

²² In practical terms, this means that all general expenses of the company are included in the numerator of the G&A calculation (irrespective of a given product line), while the denominator includes total COGS (including the COGS for subject and non-subject products and services). Therefore, we disagree with the petitioners that it would be appropriate to limit offsets to the numerator of the G&A calculation to only those income items specifically related to subject merchandise, given that the denominator includes the cost of sales for all products.

10 (PSF from Korea), where the Department stated that, “we disagreed with the petitioners that the standard is whether the items are directly linked to Huvis’s production and sale of the subject merchandise”). Therefore, for those offsets for which Diler provided sufficient explanations, we have reviewed the record evidence to determine the appropriateness of each one.

We granted severance allowance as an offset because this item was related to the reversal of severance expense accruals and the corresponding severance accruals were included in the reported G&A expenses. See Diler’s February 8, 2005, Section D supplemental response at Exhibit 46. We also granted the G&A income allocated from Diler Holding. Diler Holding provides management services to Diler and Yazici and in turn invoices these companies for its services. When Diler and Yazici pay these invoices, the transaction is recorded as a costs item. Thus, these costs are recorded twice - once at the Diler Holding level and again at Diler and Yazici. The Department finds that excluding this income from the G&A expense rate calculation would lead to the double-counting of the related costs since expenses from Diler Holding’s financial statements have been allocated to and included in the Diler G&A expense rate calculation. Therefore, we find that it is appropriate to allow the income allocated from Diler Holding to offset G&A expenses. In addition to these items, we also allowed certain other non-operating income items as offsets to Diler’s G&A expenses because they were sufficiently explained and appear to relate to the general operations of the company.

Nonetheless, we are no longer allowing the gain on the sale of a shipping vessel as an offset to the G&A expense rate calculation for Yazici. As can be seen from Diler’s audited financial statements (see Diler’s August 16, 2004, Section A response at Exhibit A-21), the company reports its cost of sales by line of business. These separate business lines include steel manufacturing, trading operations, and cost of services rendered, which includes the shipping operations. Shipping vessels are the primary capital asset required in the shipping line of business, just as steel mills are the required capital assets for steel manufacturing. When determining whether an activity is related to the general operations of the company, the Department considers the nature, the significance, and the relationship of that activity to the general operations of the company. Routine sales of machinery and equipment are a normal part of ongoing operations for a manufacturing company and, accordingly, any resulting gains or losses are normally included as part of the G&A rate calculation. However, the sale of a fully functioning plant or business unit, or in the case of a company that has shipping operations, the sale of an entire shipping vessel, are significant transactions, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company’s normal business operations and are unrelated to the general production operations of the company. Yazici is in the business of manufacturing and selling merchandise, not selling shipping vessels. See Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (Dec. 20, 2004), and accompanying Issues and Decision Memorandum at Comment 9 (Lumber from Canada), where the Department disallowed the gain from the sale of pulp mill; see also Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 24506 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 11 (Chlorinated Isocyanurates

from Spain), where the Department disallowed any income or expenses related to the sale of production facility; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 8 (Shrimp From Brazil), where the Department did not include the loss on the sale of shrimp farm. Therefore, we have excluded the gain on the sale of a shipping vessel from the G&A expense rate calculation for Yazici for the final results.

Comment 14: Denominator of the G&A and Interest Expense Calculations for Diler

The petitioners argue that, in calculating G&A and interest expenses, Diler failed to use a denominator stated on the same basis as the COM (*i.e.*, the costs to which the ratios are applied), and therefore the Department should exclude certain items from this denominator in order to state it on the same basis. Specifically, the petitioners request that the Department exclude the following items: 1) “COGS for services rendered,” which represents mostly port expenses reported as indirect selling expenses and should therefore be treated similarly to packing expenses; 2) “COGS for trade,” which represents the cost of goods purchased and resold, assuming the Department continues to exclude the value of purchased rebar from the reported costs; 3) “COGS for other,” which represents the cost of by-products and other consumables (*i.e.*, related to non-subject merchandise); and 4) “cost of scrap vessels sold,” which represents the costs associated with the scrap vessel purchases and demolition. The petitioners note that Diler excluded expenses related to the latter two categories from the reported costs.

Diler argues that it correctly included total COGS in the denominator of its G&A and interest expense rate calculations. Diler contends that the Department’s questionnaire directs respondents to compute a G&A expense rate based on the ratio of total company-wide G&A expenses divided by total COGS. Further, Diler argues that the questionnaire also directs respondents to compute a financial expense rate based on the ratio of total net interest expenses divided by total COGS. Therefore, Diler asserts that its G&A and financial expense rate calculations were consistent with the Department’s instructions. Further, Diler specifically refutes the petitioners’ argument that port expenses should be excluded from the COGS figure, stating that, while port expenses associated with the sale of finished goods were included in indirect selling expenses, the port expenses associated with the importation of raw material inputs were included in the “COGS for services rendered” figure. Finally, Diler argues that the petitioners’ contention regarding packing expenses is incorrect because these expenses are clearly included in its selling expenses within its financial accounts and financial statement. For these reasons, Diler maintains that the Department should not make any adjustment to the COGS figure used as the denominator of the G&A and interest expense rate calculations.

Department’s Position:

We agree with Diler that it correctly included the total COGS in the denominator of its G&A and interest expense rate calculations. Section 773(b)(3)(B) of the Act states that the Department shall include “an amount for selling, general, and administrative expenses based on the actual

data pertaining to the production and sales of the foreign like product by the exporter in question” for purposes of calculating the COP. However, the antidumping law does not prescribe a specific method for calculating the G&A or interest expense rates. When the statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Because there is no bright-line definition in the Act on how the G&A or interest expense rates should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A and interest expenses. This reasonable, consistent, and predictable method is to calculate the G&A and interest expense rates on a company-wide basis, and not on a divisional or product-specific basis. See Notice of Final Determination of Sales at Less Than Fair Value and Negative final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand, 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 12.

As with many cost allocation issues that arise during the course of an antidumping proceeding, there may be more than one way to reasonably allocate the costs at issue. This is precisely why the Department has developed a consistent and predictable approach to calculating and allocating G&A and financial costs. The Department’s normal practice of calculating the G&A and interest expense rates based on the COGS rather than COM affords consistency across cases and is not results driven. In certain instances, an unusual fact pattern may present itself where it may be appropriate to deviate from the Department’s normal practice. However, such a fact pattern does not exist in this case.

The Department recognizes that G&A and interest expenses are incurred for products sold during a period that were manufactured both in the current and in prior periods. Because the Department considers G&A and financial expenses to be period expenses and extracts them from the annual audited financial statements for the period most closely corresponding to the POR, these rates should be calculated based on expenses (*i.e.*, COGS) that are also reflected in the financial statements for the same period. Further, the COGS method recognizes the fact that G&A and financial expenses are incurred to support a range of activities within the company’s overall operation. Thus, all COGS activities should be burdened with a proportional amount of G&A and financial expenses. Diler’s purchases of finished rebar and consumable goods, operating vessels and other activities indicated by the petitioners may not be directly related to the production of the merchandise under consideration. However, it is inevitable that these activities benefitted from general and financial expenditures supporting the company’s overall operations during the POR. Finally, we note that port services were treated appropriately in the margin calculations. Specifically, we note that port expenses associated with the importation of raw material inputs and third party services were included in the cost of sales, while port expenses associated with the sale of finished goods were included in indirect selling expenses (*i.e.*, within the marketing, selling and distribution expenses on the financial statements). See Diler’s February 8, 2005, Section D supplemental response at 23 and Exhibits 34 and 38. We noted that the port expenses in question were not related to the sale of finished subject merchandise and were properly included in COGS (*i.e.*, the denominator of the G&A expense rate calculation). Consequently, we have continued to use total COGS as the denominator in

calculating Diler's G&A and financial expense rates for the final results.

Comment 15: Interest Expense Calculation for Diler

The petitioners contend that Diler failed to submit financial statements of the Diler Group's bank, Diler Yatirim Bankasi A.S. (Diler Bank), despite requests from the Department to submit financial statements for each member of the Group. The petitioners argue that without the audited financial statements of the Group's central bank, Diler's calculated financial costs are not credible and, thus, the use of facts available is appropriate. Moreover, the petitioners contend that, because Diler failed to respond to the Department's information requests, AFA is appropriate here. As AFA, the petitioners argue that the Department should calculate Diler's financial expenses using the short term interest rate reported in Diler's home market sales response.

According to Diler, the petitioners' suggestion of AFA is both unsupported by the record and (given Diler's level of cooperation in this proceeding) contrary to law. Specifically, Diler disagrees that the financial statements of Diler Bank are relevant to the Department's analysis, given that in the preliminary results the Department used the company-specific financial statements of Diler and Yazici to calculate each company's interest ratio. Instead, Diler asserts that the only relevant transactions involving this bank would be affiliated party transactions between the entities, and these transactions were insignificant during the POR. Nonetheless, Diler maintains that it provided sufficient information regarding the bank's services and it demonstrated that the transactions in question were at arm's-length. Thus, Diler maintains that the transactions with Diler Bank were properly reflected in Diler's and Yazici's interest expense rate calculations and that, therefore, no adjustment is warranted.

Department's Position:

In the ordinary course of business, Diler does not prepare "Group" consolidated financial statements. Therefore, Diler used its combined financial statements to calculate its reported financial expense rate. According to Diler, these combined financial statements included only four companies in the "Group" and are prepared for borrowing purposes. The Department's normal practice is to calculate the financing expense rate based on the respondent's audited financial statements at the highest level of consolidation. See Steel Plate Products from France at 64 FR 73152. This practice has been upheld by the CIT. See Gulf States Tube Division v. U.S. at 647-648. However, because Diler does not prepare audited consolidated financial statements for the group, we are unable to base the calculation of interest expense on the financial results of the consolidated entity which includes Diler and Yazici.

Consistent with our determination in the preliminary results, we continue to find that it is inappropriate to base financing expenses on the combined financial statements since they include only four members of the group and do not reflect the results of several other significant members within the Diler Group. Consequently, the combined financial statements do not accurately represent the real financing experience of the Diler Group. Furthermore, preparing consolidated financial statements is a complex task when there are numerous affiliated parties

such as in this case. Generally, this task is completed at the direction of an independent outside auditing firm which certifies that the proper procedures have been performed. Therefore, the Department generally does not accept a respondent's consolidated worksheets prepared solely for the antidumping analysis.

For these reasons and consistent with our approach in Mushrooms From India at Comment 15, we are continuing to base Diler's financial expense rate calculation on the company-specific audited financial statements of Diler and Yazici. Specifically, it is appropriate to use company-specific audited financial statements in this case because: 1) audited consolidated financial statements do not exist; 2) the activities between Diler, Yazici and Diler Bank appear to be minimal; and 3) record evidence demonstrates that the financing activities between these entities appear to be at arm's length. See Diler's February 8, 2005, Section D supplemental response at Exhibit 48. Given that our practice is to use company-specific financial statements for purposes of calculating interest expenses in the absence of consolidated statements, we disagree with the petitioners that the company-specific financial statements of the Group's bank are relevant to this question and that an inference, adverse or otherwise, would be appropriate here.

We also acknowledge that Diler incurred a significant amount of net foreign exchange gains which exceeded its financial expenses during the year. Since we consider foreign exchange transactions as financing activities, we have included the total net foreign exchange gains in the interest expense rate computation and set Diler and Yazici's financial expense rates to zero for the final results. See Comment 27, below.

Comment 16: Omitted Costs for Diler

Diler's total COGS, as shown on its financial statements include an item labeled "Cost of Sales (Other)" which Diler excluded from the reported COM. The petitioners argue that the sample invoices provided on the record of this case related to "Cost of Sales (Other)" appear to represent scrap and other consumables used in the production of subject merchandise. Therefore, based on the plain description of the invoices, the petitioners contend that the Department should determine that these amounts are relevant and include them in the reported costs for the final results.

Diler argues that the "Cost of Sales (Other)" item primarily consists of scrap and consumables that were purchased and subsequently resold to its customers. Diler asserts that if these products were consumed in the production of billet and rebar, their value would have been reflected first as part of the billet or rebar inventory, and then would ultimately flow through to a different line item in the financial statements such as "Cost of Goods Sold (Product)" or "Cost of Goods Sold (Trade)." Further, Diler argues that the financial account "scrap" within the "Cost of Sales (Other)" was neither consumed in the production of the subject merchandise nor generated as a result of the production of subject merchandise. As evidence of this assertion, Diler cites: 1) the scrap sale invoices to its customers; and 2) the by-product offset representing only edges and defective bar. Thus, Diler maintains that there is no reason for including the amount labeled "Cost of Sales (Other)" in the reported costs.

Department's Position:

We agree with Diler that the item "Cost of Sales (Other)" was related to purchased scrap and consumables that were subsequently resold to its customers. The record shows that "Cost of Sales (Other)" represents the cost of consumable items such as electrodes, chemicals, gas, oils, hydraulic materials, mineral oil and scrap that were sold. See Diler's February 8, 2005, Section D supplemental response at Exhibits 38 and 39. In order to demonstrate that these items were appropriately excluded from the reported costs, Diler provided several sales invoices for scrap. These invoices demonstrated that the scrap in question was sold to Diler's various customers and was not used in the production of subject merchandise. See Diler's February 8, 2005, Section D supplemental responses at Exhibits 38 and 39 and March 31, 2005, Section D supplemental response at Exhibit 55. Thus, based on the evidence on the record, there is no basis to conclude that the item "Cost of Sales (Other)" was related to the production of subject merchandise. Therefore, we have continued to exclude this item from the reported costs for the final results.

C. Habas

Comment 17: Offsets to G&A Expenses for Habas

For the preliminary results, the Department accepted Habas's G&A calculation in which total G&A expenses were offset by the following items: insurance claim settlements; scrap contractual difference; other operational income - other income; and office rental and service income. The petitioners disagree that Habas's calculation was appropriate because they contend that Habas did not provide information regarding the nature of the offsetting items in question. Thus, the petitioners claim that Habas failed to justify these items as legitimate offsets to G&A expenses.

Specifically, the petitioners argue that the Department should exclude from Habas's G&A expense calculation the offsets for "other income" consisting of "dividend income from affiliates," "expired reserves," "forex income," "other income VAT exempt," and "sale of fixed assets" because they consist of unexplained income items which do not appear to relate to the company's central operations. According to the petitioners, a party seeking a favorable adjustment bears the burden of proof in justifying the claim. See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 66 FR 3540 (Jan. 16, 2001), and accompanying Issues and Decision Memorandum at Comment 6.

Habas disagrees that it failed to justify any of the offsetting items in its questionnaire responses. Specifically, Habas contends that its claimed offsets were either of a type routinely accepted by the Department (e.g., insurance claim settlements on vehicles, gains on sales of vehicles) or were described in detail in its questionnaire response and accompanied by supporting documentation (e.g., scrap contractual differences, office rental and service income). Moreover, Habas maintains that its G&A ratio calculation was derived from and reconciled to its official financial statements. See Habas's August 16, 2004, Section D response at Exhibit D-17.

Habas also disagrees with the petitioners' allegation that it included an amount for "other income" as an offset to G&A expenses. Habas notes that this amount was not included in the calculations, but rather was presented solely as a reconciling item in order to link its response to its audited financial statements.

Finally, Habas maintains that the petitioners have not pointed to any evidence to show that the offsets are improper. Moreover, Habas asserts that, had the petitioners been seriously concerned with the propriety of these adjustments, they could have raised them before the record was closed. Thus, Habas maintains that the Department should continue to use its reported G&A ratio because it properly included and justified the offsets to its G&A expenses.

Department's Position:

We have reviewed the record with respect to each of the offsetting items included by Habas in its G&A expense calculation, and we find that Habas has provided both a detailed and adequate justification for each. Specifically, regarding the scrap contractual difference, we note that Habas provided a detailed explanation and supporting documentation for this item in its January 31, 2005, supplemental response (at 19-20 and exhibit SD-35). We find that the information provided by Habas demonstrates that this revenue is directly related to Habas's normal operations (*i.e.*, purchases of scrap used in the production of rebar) and was also treated as an offset to Habas's G&A expenses in its financial statements. Therefore, we find that this offsetting amount was appropriately included in Habas's G&A calculations.

Regarding office rental and service income, Habas also provided a detailed explanation of and documentation substantiating this income in its January 31 response. See Habas's January 31, 2005, supplemental response at 20-21 and exhibit SD-36. Specifically, Habas explained that the costs it incurred (*e.g.*, electricity, computer, and telephone) to provide the office space and utility services to its affiliated companies were recorded as G&A expenses in its books and that these expenses were subsequently offset by payments received from the affiliates and included in Habas's audited financial statements. Therefore, based on the information on the record, we have continued to allow this offset to the G&A expenses. Further, with regard to insurance claim settlements on vehicles, we agree with Habas that this income amount is normally taken as an offset to G&A expenses because the insurance was paid on costs borne by the company.

We disagree with the petitioners that the amount for "other income" was used to offset Habas's G&A expenses, but rather note that only one component of that figure (*i.e.*, sale of fixed assets) was included as an offset to the G&A expenses. An examination of Exhibit D-17 of Habas's August 16, 2004, response and Exhibit SD-34 of Habas's January 31, 2005, response demonstrates that the remainder of the "other income" figure was used only to reconcile Habas's G&A expenses to its financial statements. Regarding the "sale of fixed assets - cars and trucks" amount, we agree with Habas that this figure was appropriately treated as an offset to the G&A expenses. We note that it is the Department's practice to treat routine sales of machinery and equipment as a normal part of the ongoing operations of a manufacturing company, and accordingly, any resulting gains and losses are normally included as part of the G&A expense calculation. See Notice of Final Determination of Sales at Less Than Fair Value and Negative

Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 76916 (Dec. 23, 2004) and accompanying Issues and Decision Memorandum at Comment 16. As a result of our finding that the above-mentioned offsetting amounts were correctly included in Habas's G&A expense calculation, we have made no adjustment to Habas's G&A expense ratio for the final results.

D. ICDAS

Comment 18: Revocation for ICDAS

In the preliminary results, the Department found that the order with respect to merchandise produced and exported by ICDAS should be revoked because: 1) the company had zero or de minimis margins for a period of at least three consecutive years; 2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and 3) the continued application of the order is not otherwise necessary to offset dumping.

The petitioners argue that even if ICDAS's nominal margin remains de minimis in the final results, the Department should exercise its regulatory discretion under 19 CFR 351.222(b)(2)(i)(c) -- which states that the Department will consider whether the continued application of an antidumping order is necessary to offset dumping -- and not revoke the order if the final assessment rate is above de minimis. The petitioners state that in accordance with the regulations a duty must be collected when the assessment rate is equal to or greater than 0.5 percent ad valorem. See 19 CFR 351.106(c)(2). Therefore, according to the petitioners, in this circumstance ICDAS would be not trading fairly because duties would be owed on subject merchandise produced by ICDAS. The petitioners contend it is possible that in the final results, ICDAS may have importer-specific assessment rates above the de minimis threshold upon which duties will be owed, showing that an antidumping duty order is still necessary.

ICDAS argues that the petitioners did not cite any prior Department precedent or offer any evidence to rebut the presumption of revocation for ICDAS. ICDAS maintains that it has met the conditions to obtain revocation. First, ICDAS contends that it has established three consecutive years of selling commercial quantities of rebar in the United States pursuant to 19 CFR 351.222(d), a fact which was not disputed by the petitioners, and that its margin in each of these years has been zero or de minimis, as required by 19 CFR 351.222(b)(2)(i)(A). See the memorandum from Irina Itkin to the file entitled, "Analysis of Commercial Quantities for ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Request for Revocation," dated May 2, 2005 (Commercial Quantities memo); Rebar Prelim 03-04; Rebar Final 02-03; and Rebar Final 01-02.

ICDAS concedes that, according to 19 CFR 351.222(b)(2)(i)(C) the Department must consider "whether the continued application of the antidumping duty order is otherwise necessary to offset dumping." However, ICDAS argues that it is entitled to a presumption against maintaining the order because in a situation in which there has been an absence of dumping for three consecutive years, "the Department intends to presume that an order is not necessary in the absence of additional evidence." See Amended Regulation Concerning the Revocation of Antidumping and

Countervailing Duty Orders, 64 FR 51236, 51238 (Sept. 22, 1999), published upon adopting 19 CFR 351.222(b) (Revocation Regulation). ICDAS contends that, given its history of zero or de minimis margins, it should be entitled to a strong presumption in favor of revocation. See Rebar Prelim 03-04; Rebar Final 02-03; Rebar Final 01-02; and Certain Steel Concrete Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review, 66 FR 56274, 56275 (Nov. 7, 2001).

In addition, ICDAS states that according to the Revocation Regulation, “the Secretary must make an affirmative finding of necessity in order to retain an antidumping order” and that finding must be based on “substantial evidence.” See Revocation Regulation, 64 FR at 51238-39. ICDAS contends that the petitioners’ argument regarding assessment rates is not sufficient positive evidence to meet this burden. Furthermore, ICDAS argues that the obligation of a party to come forward with positive evidence must be read in conjunction with the Department’s requirement that in a review, parties must supply any new factual information with 140 days of the last day of the anniversary month. See 19 CFR 351.301(b)(2). Therefore, according to ICDAS, not only is the petitioners’ claim insufficient to overcome ICDAS’s presumption in favor of revocation because it is not substantial evidence of the likelihood of future dumping, but it is also untimely because the petitioners did not submit any positive substantial evidence by the applicable deadline.

In support of its argument, ICDAS cites the “Statement of Administrative Action on the Agreement on Implementation of Article VI” (SAA), which explains that when analyzing the likelihood of the continuation or recurrence of dumping, the Department will “examine the relationship between dumping margins, or the absence of margins, and the volume of imports of subject merchandise.” See SAA at 889. Specifically, ICDAS states that the SAA explains that this relationship is examined because it may be an indication that dumping is unlikely to continue or recur in a case where “declining (or no) margins are accompanied by steady or increasing imports.” See SAA at 889-890. ICDAS notes that its sales and margin pattern fall under this description because it has had zero or de minimis margins while steadily importing significant amounts of rebar. Further, the SAA describes “other information” that might be relevant in analyzing the likelihood of future dumping including “the market share of foreign producers subject to the antidumping proceeding; changes in exchange rates, inventory levels production capacity, and capacity utilization; any history of sales below the COP; changes in manufacturing technology of the industry; and prevailing prices in relevant markets.” See SAA at 890.

ICDAS also contends that the Department’s decision in Final Results of Antidumping Administrative Review: Brass Sheet and Strip from Germany, 61 FR 49727 (Sept. 23, 1996) (Brass Sheet and Strip from Germany) (in which the Department denied revocation based on the likelihood of future dumping) is relevant here. Specifically, ICDAS contends that Brass Sheet and Strip from Germany shows that substantial evidence is needed to rebut the presumption of favor of revocation, such as a steady decrease in sales of the subject merchandise, the ownership of a factory in the United States that used the subject merchandise as an input, under-utilized production capacity in the home country, and strengthening currency in a price-sensitive industry. ICDAS argues that unlike in that case, the petitioners in the instant case offer no such evidence and asserts that importer-specific assessment rates are not relevant to the general trend of sales

volume in conjunction with net dumping margins, nor to the “other information” described in the SAA.

Furthermore, ICDAS notes that the Department’s practice has not been to consider importer-specific assessment rates when weighing evidence for or against revocation. As support for this assertion, ICDAS cites the following cases: Final Results of Antidumping Duty Administrative Review: Sebacic Acid from the People’s Republic of China, 67 FR 69719, 69720 (Nov. 19, 2002) (Sebacic Acid from China); Final Results of Seventh Antidumping Duty Administrative Review: Certain Pasta from Italy, 70 FR 6832, 6833 (Feb. 9, 2005) (Pasta from Italy 2002-2003 Review); and Final Results of Antidumping Duty Administrative Review: Carbon Steel Plate from Canada, 64 FR 2173, 2191 (Jan. 13, 1999) (Plate from Canada). According to ICDAS, the Department’s decision in Sebacic Acid from China is particularly illustrative because the respondent had a final dumping margin of 0.47 percent, which is identical to ICDAS’s preliminary margin. ICDAS asserts that while the importer-specific assessment rates are not publicly available in this case, it is possible that the rates were similar to ICDAS’s given their identical weighted-average nominal dumping margins. Therefore, ICDAS argues that the Department should be consistent with its regulations and practice and revoke the antidumping duty order with regard to ICDAS.

Department’s Position:

The framework for determining if a producer or exporter is eligible for revocation is set forth in 19 CFR 351.222(b). According to subsection (2)(i) of this provision,

In determining whether to revoke an antidumping duty order in part, the Secretary will consider:

- (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;
- (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and
- (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

See 19 CFR 351.222(b)(2)(i).

We have determined that the request from ICDAS meets all of the criteria under 19 CFR 351.222(b)(2)(i). Specifically, our final margin calculations show that ICDAS sold rebar at not

less than NV during the current review period because its margin is de minimis (i.e., 0.14 percent). In addition, ICDAS sold rebar at not less than NV in the two previous administrative reviews in which it was involved (i.e., ICDAS's dumping margin was zero or de minimis). See Rebar Final 02-03 and Rebar Final 01-02.

Moreover, based on our examination of the sales data submitted by ICDAS, we find that ICDAS sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by ICDAS to support its request for revocation. See Commercial Quantities memo. Because we find that ICDAS had zero or de minimis dumping margins for its last three administrative reviews and sold in commercial quantities in each of these years, we also find that the requirements of 19 CFR 351.222(d) have been met.

Accordingly, we find that application of the antidumping duty order to ICDAS is no longer warranted for the following reasons: 1) the company had zero or de minimis margins for a period of at least three consecutive years; 2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and 3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we find that ICDAS qualifies for revocation of the order on rebar pursuant to 19 CFR 351.222(b)(2)(i) and that the order with respect to merchandise produced and exported by ICDAS should be revoked, in accordance with our practice. See, e.g., Sebacic Acid from China at Comment 3; Pasta from Italy 2002-2003 Review at Comment 20; and Plate from Canada, 64 FR at 2191. As a result, in accordance with 19 CFR 351.222(f)(3), we are terminating suspension of liquidation for the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after April 1, 2004, and instructing CBP to refund any cash deposits for such entries.

We disagree with the petitioners' argument that ICDAS does not qualify for revocation in this review based on the fact that certain of its importer-specific assessment rates may be above de minimis. As noted in the explanation of the final rule governing our revocation regulation, the Department is directed to presume that, in situations where there has been an absence of dumping for three consecutive years, "an order is not necessary in the absence of additional evidence." See Revocation Regulation, 64 FR at 51238. Specifically, the preamble states:

All parties may be in a position to provide information concerning trends in prices and costs, currency movements, and other market and economic factors that may be relevant to the likelihood of future dumping. If no party provides information addressing these issues, we rest with the presumption that an order is not necessary in the absence of dumping. If the petitioner comes forward with information demonstrating that the maintenance of the order is necessary, that initial presumption is rebutted, and the burden of production shifts to the respondents. . . . The Department must weigh all the evidence on the record and determine whether the continued application of the order is necessary to offset dumping (or subsidization). Each revocation determination must be based upon substantial, positive evidence and be otherwise in accordance with law.

See Id.

Given this presumption, our practice has been to require substantial evidence showing that continued application of the antidumping duty order is otherwise necessary to offset dumping. See, e.g., Brass Sheet and Strip from Germany, 61 FR at 49730, where the Department found a likelihood for future dumping based on multiple factors (e.g., a drop in demand for the merchandise in the home market, the respondent's severe decreases in shipments to the United States, and difficulty of competing for sales in both markets in light of a strengthened Deutsche mark, etc.). We find that the mere existence of above-de minimis assessment rates does not meet this evidentiary threshold.

Under 19 CFR 351.222(b)(2)(i)(A), we examine whether respondents have sold the subject merchandise at not less than NV for a period of at least three consecutive years. For this purpose, we do not consider that margins on specific transactions nor calculated assessment rates are at issue; rather, our examination is focused on the totality of the respondent's pricing experience. The Department considers the weighted-average dumping margin to be the appropriate basis for determining whether a company sold the subject merchandise at not less than NV. Furthermore, because the weighted-average dumping margin is representative of an exporter's experience as a whole and assessment rates are reflective of practices isolated to particular customers and are often calculated on a different basis, it is not uncommon that certain of a company's individual assessment rates are greater than de minimis even though its weighted-average dumping margin is de minimis. Therefore, the existence of assessment rates above de minimis by itself is not a sufficient basis to find that continued application of the order is necessary to offset dumping.

Comment 19: Affiliated Party Sales in ICDAS's Home Market

During the POR, ICDAS sold rebar in the home market through various affiliated resellers. In its home market sales ICDAS reported the sales made by these affiliated parties to the first unaffiliated customer (rather than the sale to the affiliates.)

The petitioners maintain that, where sales to affiliates (also known as "upstream" sales) constitute less than five percent of a respondent's home market sales, the Department's regulations at 19 CFR 351.403(d) normally do not permit the Department to base its analysis on the affiliate's resales (also known as "downstream" sales) if the affiliate's resales are at arm's-length.²³ The petitioners claim that, where the downstream sales constitute more than five percent of the sales database, the Department normally: 1) requires respondents to report both the upstream and downstream sale; and 2) conducts the arm's length test on the upstream sale prior to using the downstream one. The petitioners claim that there is no evidence on the record indicating that the Department excused ICDAS from reporting its upstream sales, nor did the Department explain why it did not conduct an arm's-length test on the upstream sales prior to

²³ We note that the petitioners have misstated this regulation. We believe that the petitioners intended to say that the Department normally will not use downstream sales in its analysis if the upstream sales account for less than five percent of the respondent's home market sales.

analyzing the downstream sales. The petitioners contend that the Department should provide an explanation for the final results.

ICDAS disagrees that it “failed” to report upstream sales, given that it was instructed not to do so by the Department in the May 13, 2004, Section A and B questionnaires at pages A-2 and B-8. ICDAS notes that these instructions are part of the Department’s standard questionnaire issued for all administrative reviews and were not written expressly for ICDAS. Furthermore, ICDAS argues that, contrary to the petitioners’ assertions, the Department’s instructions for and use of downstream sales are clearly set forth within 19 CFR 351.403(d), as well as in the Preamble, 62 FR at 27365.

In any event, ICDAS maintains the petitioners misinterpreted the information reported in its home market sales listing. Specifically, ICDAS notes that the transactions coded as sales to affiliated parties represent transactions for the affiliated resellers’ own consumption. Thus, ICDAS argues that while the percentage of these sales is under five percent, the percentage of sales made to affiliated parties during the POR (i.e., the relevant statistic in this instance) is well above the five percent threshold.

Department’s Position:

During the POR, ICDAS sold rebar to affiliated parties in the home market. These sales represented a significant portion of the company’s home market sales activity. See ICDAS’s August 16, 2004, Section A response at A-30. Therefore, in accordance with the instructions set forth in the questionnaire, ICDAS reported the downstream sales by its affiliates, rather than the sales to the affiliates themselves.

The Department’s regulation regarding sales through affiliated parties is set forth at 19 CFR 351.403(d). Specifically, this regulation “normally” permits the Department to use downstream sales in its analysis unless: 1) the respondent’s upstream sales to affiliates account for less than five percent of the total volume or value of its total sales in the comparison market; or 2) the upstream sales to affiliates are at arm’s-length. In this case, ICDAS’s sales to affiliates represent more than five percent of its comparison market sales, so the first exception does not apply. Regarding the second exception, we did not request that ICDAS report these transactions in light of the fact that it supplied information on its downstream transactions. Thus, the second exception also does not apply here.

Finally, we disagree with petitioners that the Department’s normal practice is to require the reporting of both up- and down- stream sales transactions. Our standard questionnaire, issued to ICDAS on May 13, 2004, directs respondents to “exclude sales to affiliated resellers” and to “report instead the resales by the affiliates to unaffiliated customers.” See question A.1.c at A-2. The standard questionnaire also instructs respondents “{u}nless requested by the official in charge, do not report sales to affiliated resellers of the merchandise; report only the resales by the affiliated reseller to unaffiliated customers.” See field number 5.0 at B-8. In this case, ICDAS not only complied with these instructions, but we verified the accuracy of the reported information prior to the preliminary results. See the March 31, 2005, memorandum from Irina

Itkin, Alice Gibbons, and Brianne Riker to Louis Apple entitled, “Verification of the Sales Questionnaire Responses of the Affiliated Resellers of ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. in the 2003-2004 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey.” Therefore, we have continued to use this information in our analysis for purposes of the final results.

Comment 20: *Arm’s-Length Test for ICDAS*

In its home market sales listing, ICDAS reported certain sales to affiliated party end user customers. For the preliminary results, the Department tested these sales to ensure that they were made at “arm’s-length” prices, in accordance with 19 CFR 351.403(c).

The petitioners maintain that ICDAS’s sales listing contains two errors which affect the results of the arms-length test. First, they note that ICDAS has inconsistently classified one customer as both an affiliated and an unaffiliated party. Second, they note that ICDAS failed to report a consolidated customer code in its database, resulting in the same customers being treated as different entities. The petitioners maintain that the Department should correct these errors for the final results and re-run the arm’s-length test.

ICDAS agrees that it inadvertently misclassified one sale to an affiliate as a sale to an unaffiliated party and that this error should be corrected for the final results. Regarding the consolidated customer codes, ICDAS also agrees that there are instances in which the same customer name appears with different codes, due to the fact that the same customer exists in the sales system of more than one company (*i.e.*, its own system and those of its affiliates). However, ICDAS disagrees that any change to its data is warranted because creating consolidated customer codes will not impact the margin calculations in any way.

Department’s Position:

We have examined the data on the record and agree that ICDAS classified one sale to an affiliated customer in its home market sales listing as a sale to an unaffiliated party. Accordingly, we treated this sale as an affiliated party transaction for the final results.

Regarding the issue of consolidated customer codes, however, we agree with ICDAS that creating consolidated codes here is unnecessary. When conducting the arm’s-length test, the Department does not calculate an average net price for sales of each product to each customer; rather we calculate an average price (by product) to all unaffiliated parties. Because average prices for affiliated-party sales are calculated based on customer codes, a consolidated customer code is only necessary for sales to affiliated parties. After reviewing all of ICDAS’s sales to affiliated customers, we found only one instance of a sale that had been incorrectly coded (*i.e.*, the same sale as discussed above). Therefore, we have also created a consolidated customer code for sales to this customer for the final results, and we re-ran the arm’s-length test using the revised data.

Comment 21: Level of Trade (LOT) for ICDAS

In the preliminary results, the Department found that ICDAS made sales through two LOTs in the home market: 1) direct sales to unaffiliated customers; and 2) sales through affiliated resellers. The Department also found that ICDAS made U.S. sales through a single LOT (*i.e.*, direct sales to unaffiliated customers). After analyzing the data on the record, we concluded that the home market LOT for ICDAS's direct sales is the same as the U.S. LOT because the selling functions performed for each type of sale are substantially the same. The petitioners disagree with these determinations and argue that the Department should revise its final results to consider all of ICDAS's home market sales to be at the same LOT because the quantitative difference in selling functions is not substantive enough to warrant separate LOTs.

As a threshold matter, the petitioners imply that it is inappropriate to find multiple LOTs in the home market, given that no party to this review argued for distinct LOTs. Moreover, the petitioners contend that the evidence on the record of this case does not support a finding of multiple LOTs. Specifically, the petitioners assert that the evidence on the record indicates that: 1) only a few home market selling functions were duplicated by ICDAS's affiliated resellers; 2) services were performed to identical degrees for all home market sales; and 3) the only services performed to any degree were packing, freight and delivery, and extension of credit terms. In addition, the petitioners note that most sales to the ICDAS's resellers are directly shipped from ICDAS's facilities to the resellers' unaffiliated customers, and thus there is no difference in delivery functions for these transactions. Finally, the petitioners maintain that ICDAS reported that either it or its affiliated resellers perform the selling functions associated with the sales made by the affiliated resellers and that ICDAS's responses to Sections B and C explicitly state that ICDAS has only one home market LOT.

Nonetheless, the petitioners contend that, if the Department continues to find two home market LOTs for ICDAS, it should reconsider its conclusions regarding the LOT of ICDAS's U.S. sales. The petitioners assert that it is the Department's practice to examine all selling activities along the chain of distribution and to consider the cumulative selling functions along this chain. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 1 (Beams from Spain). The petitioners argue that ICDAS's U.S. selling functions have clear qualitative and quantitative differences from the home market LOT for ICDAS's direct sales because ICDAS incurred additional expenses related to them, such as loading onto vessels, brokerage and handling, ocean freight, independent survey reports, bank charges, customs clearance charges, import and other duties, and export association fees and customs overtime. Therefore, according to the petitioners, even when the same type of service was performed for both home market and U.S. sales (*e.g.*, freight coordination), the service performed on behalf of the U.S. sale required more planning and indicates a different stage of marketing than ICDAS's direct sales in the home market. Also, the petitioners assert that U.S. sales through ICDAS's affiliated importer have an additional layer of selling functions and distribution that further differentiate the U.S. LOT from the home market LOT for ICDAS's direct sales.

Because of these differences, the petitioners contend that, if the Department continues to find two home market LOTs, ICDAS's U.S. LOT should be compared to the LOT for ICDAS's sales through affiliated distributors in the final results. The petitioners maintain that both the U.S. LOT and the home market LOT for sales through the affiliated resellers have additional layers not performed for the direct sales in the home market that are comparable. Alternatively, the petitioners argue that if the Department does not find at a minimum substantial quantitative similarities between the U.S. LOT and the LOT for ICDAS's sales through affiliated resellers, then it should classify ICDAS's U.S. LOT as a separate level from both of the home market LOTs and disregard LOT entirely from the final margin calculations, in accordance with its practice. See Certain Pasta from Turkey: Preliminary Results of New Shipper Antidumping Duty Review, 65 FR 77855 (Dec. 13, 2000), unchanged in Certain Pasta from Turkey: Final Results of New Shipper Antidumping Duty Review, 66 FR 14541 (Mar. 13, 2001).

ICDAS disagrees, stating that the Department has correctly and consistently identified its LOTs. ICDAS states that this issue has been addressed in detail in the past three administrative reviews and that the Department has consistently applied the same LOT analysis. Furthermore, ICDAS notes that the petitioners have never before objected to the Department's LOT analysis, even though its sales practices in both markets have remained the same as in previous reviews. Therefore, according to ICDAS, the petitioners' allegation that there are not substantial quantitative differences between selling functions between the home market LOTs was already settled in the 2001-2002 review. In that review, ICDAS states that the Department decided that for the home market sales made directly to unaffiliated customers and the sales in the U.S. market, the selling functions only occurred once, while for the home market sales made through affiliated resellers, the selling functions occurred twice. See Rebar Final 01-02 at Comment 6. Based on that premise, according to ICDAS, the Department correctly determined that the home market LOT for ICDAS's direct sales and the U.S. LOT are substantially similar. ICDAS contends that the petitioners did not point to any factual or legal error in the Department's analysis, and thus it will be accorded deference by the Courts. See, e.g., Slater Steels Corp. v. United States, 279 F.Supp.2d 1370 (CIT 2003) (Slater I).

Department's Position:

As a threshold matter, we disagree with the petitioners' argument that the Department should only conduct LOT analyses where a party raises LOT as an issue. The Department's regulations at 19 CFR 351.412(c)(2) require the Department to make LOT determinations in the context of its normal dumping analysis. Specifically, 19 CFR 351.412(c)(2) (emphasis added) states:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Therefore, it is the responsibility of the Department to conduct an analysis to determine if sales are made at different levels of trade, regardless of whether a party to the review requests such analysis.²⁴ In determining whether substantial differences in selling activities exist, the Department examines all selling activities which occur along the chain of distribution. When a producer sells through an affiliated reseller in the comparison market, we consider the relevant functions to be the selling functions of both the producer and the reseller (*i.e.*, the cumulative selling functions along the chain of distribution) for purposes of comparing the selling activities related to the affiliate's sale with those related to the producer's sale to its customers.²⁵ If the reseller performs selling functions which add substantial selling activity to make the sale, we may find that sales by the reseller are made at a different LOT than the LOT of the producer. See Beams from Spain at Comment 1.

We disagree with the petitioners' argument that the quantitative difference in home market selling functions is not substantive enough to warrant separate LOTs. In the Prelim Concurrence Memo we stated:

ICDAS performed the following selling functions/services to sell to both its unaffiliated customers and its affiliated resellers in the home market: order processing, packing, sales and marketing support, freight coordination, and extension of credit terms. In addition, ICDAS's affiliated resellers performed all of these same selling functions/services to sell to their customers.

Because there has been no new or revised information submitted regarding ICDAS's selling functions, we continue to find that ICDAS performs an additional layer of selling functions on its sales through affiliated distributors which is not performed on sales to unaffiliated customers (*i.e.*, in the chain of distribution, these selling functions are performed twice for downstream sales and only once for direct sales). This layer not only involves the performance of certain activities (*e.g.*, order processing) twice before the merchandise is shipped to the final customer, but it also requires ICDAS and its affiliates to each have separate sales personnel, separate offices with separate rent (or depreciation), computer equipment, etc. Because we find that these additional sales-related functions are significant, we continue to find that ICDAS's sales through affiliated distributors are at a different LOT than its direct sales to unaffiliated parties. We note that it is the Department's practice to determine that more than one LOT exists when "taken as a whole, these additional selling functions lead to the conclusion that the sales...are at a more

²⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30573 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 3, where the Department denied the respondent's request to treat its home market sales as having been made at one LOT and found instead two home market LOTs after performing an analysis of the respondent's selling functions.

²⁵ In other words, we compare the cumulative selling functions performed by both the producer and reseller in selling to the reseller's customers with the selling functions performed by the producer in selling to its customers.

remote level in the chain of distribution.” See Beams from Spain at Comment 1. Accordingly, we continue to find that ICDAS made sales through two LOTs in the home market: 1) direct sales to unaffiliated customers; and 2) sales through affiliated resellers.

We similarly disagree with the petitioners that ICDAS’s U.S. LOT should be compared with the home market LOT of sales through affiliated distributors or should be considered a wholly separate LOT. In the Prelim Concurrence Memo we stated:

For sales to the United States, ICDAS performed the following selling functions/services: order processing, packing, freight coordination, international shipping arrangements, and extension of credit terms. Furthermore, ICDAS, using the paperwork of its affiliated importer of record, arranged for U.S. customs clearance, payment of customs duties, and payment of bank charges.²⁶

Therefore, for sales to the United States, we continue to find that ICDAS performed the following sales functions: order processing, packing, freight coordination (including port and other international shipping arrangements), and extension of credit (including the payment of bank charges). While we recognize that the number of freight expenses incurred for ICDAS sales to the United States differs from the number of expenses incurred on home market sales, we note that this difference does not constitute a “substantial difference” in the stage of marketing pursuant to 19 CFR 351.412(c)(2). For example, the payment of bank charges involves no additional selling functions beyond the recording of the expense amount in the company’s accounting system. Similarly, paying export association fees and customs overtime merely involves minimal paperwork; thus, the fact that ICDAS incurs these charges solely on U.S. sales does not lead us to conclude that either rises to the level of a separate selling “function,” much less a substantial difference in the stage of marketing. Therefore, we find that ICDAS’s payment of certain additional expenses does not provide a meaningful basis for finding that the U.S. LOT is at a different LOT than ICDAS’s direct sales in the home market.

We disagree with the petitioners that any differences in selling functions ICDAS performed for its U.S. sales through its affiliated importer are substantial enough to constitute an additional layer of selling activities. Therefore, we continue to find that the U.S. LOT is the same as the home market LOT for ICDAS’s direct sales because the selling functions performed by ICDAS are substantially the same in both markets. Consequently, in the U.S. market, we have continued to match ICDAS’s EP sales to the company’s direct sales in the home market. This analysis is consistent with our analysis in the past three administrative reviews. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part, 69 FR 25063, 25067 (May 5, 2004), unchanged in the final results; and Rebar Final 01-02 at Comment 6.

²⁶ We note that all services provided in the name of ICDAS’s affiliated importer are actually performed by ICDAS employees. See the “ICDAS Sales Verification Report” at 3.

Comment 22: Whether to Treat ICDAS's U.S. Sales as Export Price (EP) or Constructed Export Price (CEP) Sales

During the POR, ICDAS exported merchandise to the United States through its affiliated U.S. importer as well as directly to unaffiliated customers. For purposes of the preliminary results, the Department treated all of ICDAS's U.S. sales as EP sales. According to the petitioners, the Department should reclassify ICDAS's U.S. sales that involved a contract between its affiliated U.S. importer and unaffiliated purchasers as CEP sales because the contracts associated with them were executed in the United States. As a result, the petitioners argue that the Department should deduct all expenses incurred by this importer from the U.S. price.

The petitioners contend that this reclassification would be not only be consistent with, but in fact is required by, a recent decision handed down by the Court of Appeals for the Federal Circuit (CAFC). See AK Steel Corp. v. United States, 226 F.3d 1361 (Fed. Cir. 2000) (AK Steel). According to the petitioners, in AK Steel, the CAFC held that U.S. sales: 1) must be classified as CEP in cases where the contract for sale was between a U.S. affiliate of a foreign producer or exporter and its unaffiliated U.S. purchaser; and 2) conversely, cannot be EP where the sale is made by a U.S. affiliate. See AK Steel at 1374. The petitioners contend that, under this reasoning, the existence of a contract between a U.S. affiliate and an unaffiliated U.S. purchaser (like the ones here, between ICDAS's U.S. affiliate and ICDAS's U.S. customers) ends the Department's inquiry.

The petitioners acknowledge that AK Steel reserves judgement on whether a sales contract between two U.S.-domiciled entities that is conducted "entirely" outside the United States would be classified as an EP or CEP sale. However, the petitioners claim that this situation does not apply here because none of the contracts in question was executed entirely outside the United States. The petitioners hinge their argument on their contention that the Court used the term "entirely" in reference to the performance of the contract, rather than the signature. As support for this conclusion, the petitioners cite Black's Law Dictionary (7th Ed., 1999) which defines the term "execute" as: 1) to perform or complete (a contract or duty); and 2) to make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form.

Therefore, the petitioners claim that it is irrelevant that the sales contracts through ICDAS's U.S. affiliate are negotiated and finalized in Turkey, because documents taken during the Department's sales verification show evidence that these contracts were executed in the United States. Specifically, the petitioners argue that these documents show that not only was title transferred in the United States, but also the contracts were governed by U.S. law. According to the petitioners, this fact pattern proves that the contract was executed in the United States between two U.S.-domiciled entities, and thus the Department should abandon its "activity-based" analysis²⁷ and instead follow AK Steel.

²⁷ Specifically, the petitioners note that the Department relied on the facts that: 1) all sales through the affiliate were based on written contracts negotiated and finalized in Turkey; 2) the affiliate has no employees; and 3) the affiliate's selling functions are outsourced to third

The petitioners contend that the Department's practice in this area has evolved from an incorrect reading of AK Steel. Specifically, the petitioners maintain that in Pineapple from Thailand, as well as in prior reviews of this order, the Department has held that sales through "paper" U.S. affiliates of foreign producers should be classified as EP sales. Nonetheless, the petitioners claim that, to the extent that Pineapple from Thailand was based on the fact that the relevant sales contracts were executed entirely outside of the United States, it is distinguishable from the facts here.

Finally, the petitioners argue that if ICDAS's U.S. sales are reclassified as CEP transactions, the Department must deduct the appropriate level of selling expenses and profit under sections 772(d)(1) and (3) of the Act. Specifically, the petitioners maintain that the Department should calculate a U.S. indirect selling expense ratio using information contained in Exhibit A-18 of ICDAS's August 16, 2004, Section A questionnaire response. In addition, the petitioners state that the Department should deduct any known "assumptions" of expenses incurred by ICDAS on behalf of its affiliated importer, pursuant to section 772(d)(1)(C) of the Act.

According to ICDAS, the Department should continue to treat all of ICDAS's U.S. sales as EP transactions because they occurred outside the United States. ICDAS argues that the term "outside the United States," read in the context of both the CEP and EP definitions, applies to the locus of the transaction at issue, not the location of the company. See AK Steel, 226 F.3d at 1369, 1370. Moreover, ICDAS notes that the "transaction" subject to AK Steel was a sale, which the Court defined as both a "transfer of ownership to an unrelated party and consideration." See AK Steel 226 F.3d at 1371.

ICDAS maintains that the petitioners' arguments are based on selective quotations from the CAFC's opinion, and thus its conclusions are misleading. For example, ICDAS points out that the petitioners quote the Court as stating, "...if the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale." See AK Steel 226 F.3d at 1374. However, ICDAS argues that the petitioners failed to address the remainder of the Court's ruling which indicates a sale cannot be an EP sale if the contract is executed in the United States and the title is transferred in the United States. According to ICDAS, the portion of the ruling quoted by the petitioners assumes that title for a sale will be transferred within the United States, and that when the Court speaks more generally it recognizes that the location at which title is passed remains dispositive.

Therefore, ICDAS maintains that contrary to the petitioners' assertion, its U.S. sales did not take place in the United States because the transfer of title, first from ICDAS to its affiliated importer and then from the affiliated importer to the unaffiliated purchaser, occurred outside of the United States, at the port of shipment in Turkey. ICDAS states that its U.S. sales were shipped as "Free on Board," "Cost and Freight" (CFR), or "Cost, Insurance, and Freight" (CIF), which as defined in the International Chamber of Commerce's "Incoterms 2000," are shipments methods in which the delivery of the goods has taken place when the goods pass the rail of the ship at the port of

shipment. ICDAS states that it paid for marine insurance only for CIF sales and that cost was passed through to the buyer. According to ICDAS, it is clear that ICDAS and its affiliated importer had divested themselves of title before the shipment to the United States.

Finally, ICDAS asserts that classifying its U.S. sales as EP transactions is consistent with prior Department practice. ICDAS states that the Department correctly interpreted AK Steel in Pineapple from Thailand as signifying that whether a sales should be classified as an EP or a CEP sale is dependent on whether the sale occurred within the United States. ICDAS notes that in Pineapple from Thailand the Department classified U.S. sales as EP transactions in instances in which a company's U.S. affiliate handled customs clearance, issued invoices, and received payments from U.S. customers but did not take possession of inventory or participate in the sales process. ICDAS claims its affiliated importer similarly does not participate in the sales process or take possession of inventory, nor does it have a physical location in the United States. Moreover, ICDAS argues that the Courts have upheld the Department in classifying sales as EP transactions where the role of the U.S. affiliate in the sales process was limited to accepting payment on behalf of the foreign producer and performing administrative functions. See Corus Staal B.V. v. United States Department of Commerce, 259 F. Supp. 2d 1253, 1259 (CIT 2003) (Corus Staal); see also, Final Results of the Ninth Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, 68 FR 2566 (Jan. 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

According to ICDAS, the rationale behind the Act's distinction between EP and CEP prices is to prevent foreign producers from inflating their U.S. prices through an amount spent by a U.S. affiliate on marketing or selling functions in the United States. Because its affiliated importer does not carry out selling or marketing functions, ICDAS contends that its U.S. sales are not at an inflated price and are appropriately treated as EP sales. Finally, ICDAS argues that the fact that its U.S. importer is a paper company which has no employees was verified by the Department in the 2002-2003 administrative review, as well as in the current review.

Department's Position:

We have continued to treat ICDAS's U.S. sales as EP transactions for purposes of the final results because these sales were made pursuant to agreements between ICDAS personnel in Turkey and the unaffiliated U.S. customer. Contrary to the petitioners' assertions, we find that our conclusion is fully consistent with the Court's intention in AK Steel. Specifically, in AK Steel the Court held the following:

{If} the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale. Stated in terms of the EP definition: if the sales contract is between two entities in the United States and executed in the United States and title will pass in the United States, it cannot be said to have been a sale "outside the United States"; therefore, the sale cannot be an EP sale. Similarly, a sale made by a U.S. affiliate or another party other than the producer or exporter cannot be an EP sale.

See AK Steel, 226 F.3d at 1371 (emphasis added).

While we note that it is undisputed that ICDAS's U.S. importer is affiliated with ICDAS, this fact alone does not require a finding that the sales in question are CEP transactions. Under AK Steel, the salient issue is whether the sale at issue takes place inside or outside the United States, which the Court further discussed in Corus Staal, noting that "the focus of the inquiry is on the location of the sale not the role played by the affiliated importer." See Corus Staal 259 F. Supp. 2d at 1259.

In this case, the record indicates that ICDAS's sales through its affiliated importer were concluded in Turkey. Specifically, in its August 16, 2004, Section A response, ICDAS describes the role of its affiliated importer as follows:

ICDAS has classified its sales made through {its affiliated U.S. importer} as 'EP' sales in its U.S. sales database since the merchandise was sold before importation by company personnel located outside the United States (in Turkey). {The importer} does not have any employees or business premises in the U.S., therefore is not involved in the sales process, never takes possession or inventory of subject merchandise, and acts only as an importer of record. Functions such as recordkeeping and customs transactions are outsourced to third parties. All sales activities related to the sales to U.S. customers, of subject merchandise produced or exported by ICDAS, such as all sales negotiations, issuing of invoices, and preparation of the documentation to facilitate payment, occurred in Turkey.

See ICDAS's August 16, 2004, Section A response at A-8.

This explanation was confirmed in the Department's 2003-2004 sales verification report for ICDAS:

{ICDAS's affiliated U.S. importer} is a paper company in the United States which acts as the importer of record for ICDAS's U.S. sales of subject merchandise. According to company officials, the personnel in ICDAS's export sales department act on behalf of {the importer} because {the importer} itself has no employees. According to {the importer's} financial statements: 1) the company has no physical assets; and 2) its expenses consist solely of brokerage and handling, customs fees, accounting expenses, and bank charges.

See "ICDAS Sales Verification Report" at 3.

We also note that ICDAS's affiliated importer's status as paper company has not changed from 2002-2003 review in which we also classified ICDAS's U.S. sales as EP transactions. See Rebar Final 02-03 at Comment 16. Therefore, the sales agreement was signed in Turkey by ICDAS personnel, the invoice was issued by an entity in Turkey (i.e., the producer/exporter) to an entity in the United States (i.e., the U.S. customer), and it was concluded outside the United States.

Regarding the petitioners' arguments involving the transfer of title, we disagree that the evidence on the record shows that title passed to the customer inside the United States. We have examined the documents taken at verification and find that none of the contracts for POR entries shows that title passed after entry.²⁸ Rather, only one of the contracts at issue specifies when title passed to the customer, and according to this document, title passed from the seller to the buyer when payment for the merchandise under the contract was received in full. See the "ICDAS Sales Verification Report" at verification exhibit 14. For each of the transactions which entered during the POR, the payment date precedes the entry date; therefore, these documents clearly demonstrate that title was transferred outside of the United States while the vessel was en route to its port of destination.

Furthermore, the record indicates that ICDAS incurred the costs to deliver the merchandise in question and the applicable contracts stipulated that risk passed to the U.S. customer on delivery. While we disagree with ICDAS that the terms "transfer of title" and "delivery" are synonymous, we agree that, based on the definitions set forth in "Incoterms 2000: ICC Official Rules for the Interpretation of Trade Terms," delivery of the goods occurred outside the United States. According to this publication, the terms CFR and CIF denote that

"the seller delivers when the goods pass the ship's rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer."

See ICDAS's June 30, 2005, rebuttal brief at Attachment 3.

Finally, we disagree with the petitioners that this question turns on a literal interpretation of the term "execute." We find that this type of analysis is strained at best and contrary to the Court's intent in AK Steel. Whether U.S. law may govern the terms for non-performance of a contract has no bearing on whether the contract is "executed" in the United States. It is not uncommon in international trade practices for a buyer and a seller to elect an intermediary in a country outside the buyer's and seller's country. In that case, the law of the intermediary country would be controlling. In any event, however, the petitioners' assertion that the contracts in question were "executed" in the United States because they are governed by U.S. law is inapplicable to the universe of sales being examined because none of the contracts related to entries during the POR contain this stipulation. Thus, regardless of whether the term "entirely" references the performance or the signature of the contract, we find that the contracts between ICDAS's affiliated importer and the U.S. customer were executed entirely outside of the United States.

²⁸ Specifically, we note that the petitioners have referenced documents which were not used in our analysis because they do not pertain to the universe of U.S. sales used for the final results.

This analysis is consistent with the Department's general policy in this area. For example, in Pineapple from Thailand, the Department classified the respondent's sales as EP, based on the following facts: 1) while the respondent's affiliated importer was legally incorporated in the United States, it had no business premises or personnel in the United States; and 2) all activities (e.g., invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage) occurred in Thailand on behalf of the importer. Therefore, because the Department found that as the merchandise was sold before importation and outside of the United States, the transactions were considered EP sales. See Pineapple from Thailand at Comment 16. Thus, consistent with the Court's rulings in AK Steel and Corus Staal and the Department's precedent, we have continued to treat ICDAS's U.S. sales as EP transactions.

Finally, because we are continuing to classify ICDAS's U.S. sales as EP, we find that it is inappropriate to make the adjustments suggested by the petitioners (i.e., deducting selling expenses, profit, and other known "assumptions" of expenses incurred by ICDAS on behalf of its U.S. affiliated importer) because these adjustments relate to CEP sales only.

Comment 23: Collapsing Issue for ICDAS

The Department preliminarily collapsed ICDAS and its affiliated rolling mill, Demir Sanayi, into a single entity for purposes of the preliminary results due to their operational, commercial, and owner relationships. The petitioners argue that this decision was not in accordance with 19 CFR 351.401(f)(1) or the CIT's ruling in Slater I. The petitioners contend that, because ICDAS has a melt shop, a continuous casting facility, and a rolling mill, while Demir Sanayi's operations consist of only a rolling mill, Demir Sanayi would need substantial retooling in order to have equivalent production capacity and produce rebar for its own account. See ICDAS's August 16, 2004, Section D response at D-4 through D-6. According to the petitioners, a significant capital expenditure by Demir Sanayi would be necessary in order for it to create equivalent facilities to those of ICDAS. See ICDAS's August 16, 2004, Section A response at Exhibit A-17.

The petitioners contend that the Department erred in focusing on the product, instead of the facilities of ICDAS and Demir Sanayi, when making its determination regarding collapsing. As support for their position, the petitioners cite Slater Steels Corp. v. United States, 316 F.Supp.2d 1368, 1375 (CIT 2004) (Slater II), which states that 19 CFR 351.401(f)(1) "appears to require that Commerce examine the production facilities of both (or all) companies and evaluate the possibility that production may be shifted from one company to another and vice versa." According to the petitioners, Slater II explains that 19 CFR 351.401(f)(1) focuses on a company's production capacities rather than the product it produces. Therefore, the petitioners argue that instead of determining that Demir Sanayi can produce rebar and drawing the conclusion that substantial retooling would not be necessary, the Department should have conducted an analysis of whether ICDAS could shift production of rebar between itself and Demir Sanayi.

The petitioners assert that, while the Court did not ultimately rule on the Department's interpretation of this regulation on remand, it noted that an inconsistency existed between the Department's interpretation of the substantial retooling requirement in the Slater cases and in

Stainless Steel Bar from Germany. See Slater Steels Corp. v. United States, Slip. Op. 05-23 at 12-13 (Feb. 17, 2005) (Slater III). See also Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review, 68 Fed. Reg. 47543 (Aug. 11, 2003) and accompanying Issues and Decision Memorandum at Comment 10 (Stainless Steel Bar from India). According to the petitioners, in Slater III, the Court noted that the Department deemed it sufficient to examine the production facilities of only one company in the former cases, while in the latter the Department did not collapse two companies because substantial retooling would have been necessary for them to have complete redundancy in the equipment to produce each other's bar lines. See Stainless Steel Bar from Germany at Comment 15. The petitioners contend that, if the Department had performed the substantial retooling analysis in the preliminary results consistent with Slater II and Stainless Steel Bar from Germany, it would have found that Demir Sanayi lacks the facilities necessary to shift production from ICDAS without substantial retooling, and, therefore, the two companies should not be collapsed.

The petitioners contend that, as a result of the decision to collapse ICDAS and Demir Sanayi, the Department improperly relied on a single collapsed COP for the sales-below-cost analysis. The petitioners allege that, consequently, contrary to the Court's ruling in Slater II, the Department did not analyze whether the major input rule, which provides that the Department may value inputs obtained from an affiliate at the highest of the transfer price, market price, or COP, would be more appropriate than applying the collapsing rule in the instant case. See 19 CFR 351.407(b); see also Slater II at 1380.

According to the petitioners, the evidence in this case supports applying the major input rule. The petitioners argue that the Court has recognized that the "policy rationale behind collapsing is to prevent affiliated exporters with same or similar production capabilities to channel production of subject merchandise through the affiliate with the lowest potential dumping margin and thereby circumvent the United States antidumping law." See Slater I at 1376. Therefore, the petitioners contend that because Demir Sanayi is not a named party in this proceeding, the policy rationale for collapsing does not apply because ICDAS could not channel production of rebar through Demir Sanayi to circumvent the antidumping law. Rather, the petitioners maintain that the policy rationale for applying the major input rule is more on point, given that its purpose is to prevent producers from using an affiliate's transactions which are not at arm's-length in order to decrease their dumping margins. See Slater I.

Significantly, the petitioners note that the Court has held that the major input rule applies to transactions between a manufacturer and "an affiliated raw material supplier or service provider." See Viraj Group Ltd. v. United States, 25 CIT 1017, 1032, 162 F.Supp.2d 656, 671 (CIT 2001) (Viraj Group), citing Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada, 64 FR 56739, 56748 (Oct. 21, 1999). The petitioners assert that Demir Sanayi provides a major input for ICDAS in the form of rolling services and is paid monthly for such services. See ICDAS's August 16, 2004, Section D response at D-10. Therefore, the petitioners argue that, because Demir Sanayi has been collapsed with ICDAS for all cost calculations, the transfer price transactions between the two companies were not reported, which could result in an artificially low dumping margin for ICDAS, contravening the purpose of the antidumping law. See, e.g., Torrington Co. v. United States, 68 F.3d 1347, 1352 (Fed. Cir. 1995).

Therefore, in order to recalculate ICDAS's COP and final dumping margin, the petitioners argue that the Department should reopen the administrative record for this review to obtain the information necessary to apply the major input rule for Demir Sanayi's rolling services. In the alternative, the petitioners contend that the Department should resort to facts available to value Demir Sanayi's rolling services as a major input because ICDAS acknowledged the services were a major input without providing the necessary information for the Department to conduct the major input test.

ICDAS argues that the petitioners' claims are without merit, citing the two-prong test for collapsing affiliates which states that: 1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and 2) there is significant potential for the manipulation of price or production. See 19 CFR 351.401(f)(1). ICDAS notes that the petitioners do not contest that the second criterion has been met; rather they base their argument on the first prong of the test because ICDAS and Demir Sanayi do not have equivalent production facilities. ICDAS contends that the Department was correct in finding that a significant possibility for manipulation exists between ICDAS and Demir Sanayi because they share common shareholders and managers; ICDAS performs sales, accounting, finance, human resources, and administrative functions for Demir Sanayi; and a vast majority of Demir Sanayi's sales are to ICDAS. See ICDAS's August 16, 2004, Section A response at A-12 and Exhibits A-5 through A-7 and the "ICDAS Sales Verification Report" at verification exhibit 3. Moreover, ICDAS maintains that the record shows that Demir Sanayi can produce subject merchandise that is similar or identical to that produced by ICDAS without substantial retooling, as outlined in 19 CFR 351.401(f)(1). Specifically, ICDAS points out that Demir Sanayi produced straight rebar during the POR in the entire range of diameters that were manufactured by ICDAS's mills, and the Department confirmed this fact at verification. See the memorandum from Robert Greger and Ji Oh Young to Neal Halper entitled, "Verification Report on the Cost of Production and Constructed Value Data Submitted by ICDAS Celik Enerji Tersane ve Ulasim Sanayi," dated April 5, 2005, at verification exhibit 14 ("ICDAS Cost Verification Report").

ICDAS contends that the petitioners' claim is based on an inaccurate interpretation of the regulations and a flawed analysis of the production process. Specifically, ICDAS argues that a company does not need to have its own melt shop that produces steel billets in order to manufacture and produce rebar. As evidence of this assertion, ICDAS cites Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany: Final Results of Antidumping Administrative Review, 63 FR 13217 (Mar. 18, 1998) at Comment 1 (Pipe from Germany), in which the Department treated a company that manufactured line pipe from steel billets purchased from an affiliate as the producer of the pipe.

Furthermore, ICDAS argues that the petitioners are incorrect in their assertion that a comparison of ICDAS's and Demir Sanayi's balance sheets shows that a significant capital expenditure by Demir Sanayi would be necessary in order for it to have equivalent facilities to ICDAS. Specifically, ICDAS contends that the petitioners' analysis is flawed because it is based on a comparison of two plants of different sizes whose assets have been in service for a different number of years and that produce different products in addition to the subject merchandise. In

addition, ICDAS claims that the petitioners' reliance on the Slater cases is misplaced because the companies in those cases did not produce the same product, nor could they perform each other's functions. ICDAS states that the Court noted that there was a "very sparse...overlap of production facilities," making the companies "more like a supplier and a buyer, and complementary." See Slater II at 1375 and 1380. ICDAS argues that in contrast to the companies in the Slater cases, it and Demir Sanayi produce the same product, and rather than having complementary functions, their functions duplicate each other and overlap. Therefore, ICDAS contends that the rulings in the Slater cases are not applicable to this case.

ICDAS maintains that contrary to the petitioners' assertion, the Department's decision in Stainless Steel Bar from Germany is consistent with this case. ICDAS disagrees with the petitioners' characterization that the Department did not collapse two companies in Stainless Steel Bar from Germany because there was limited overlap and substantial retooling would be necessary for complete redundancy. ICDAS argues that the Department found in that case that sufficient overlap did in fact exist, permitting consideration of the second prong (i.e., whether the potential for price manipulation existed). ICDAS asserts that, after concluding that the companies' corporate structures were not significantly intertwined, the Department decided that it was not appropriate to collapse them. See Stainless Steel Bar from Germany at Comment 15. ICDAS maintains that in this case the overlap of production ranges between itself and Demir Sanayi is even greater than in Stainless Steel Bar from Germany because the rolling mills of ICDAS and Demir Sanayi use the same input of steel billets to produce the same subject merchandise in the same range of diameters. See "ICDAS Cost Verification Report" at Exhibit 14.

Regarding the petitioners' claim that Demir Sanayi should not be collapsed with ICDAS because it is not a named respondent in this review, ICDAS argues that this fact is irrelevant. ICDAS contends that 19 CFR 315.401(f) does not require a company to be named as a respondent or an exporter in order to be collapsed, but rather specifies that a company needs to be a "producer." According to ICDAS, the potential for price manipulation does not depend on whether the second company exported to the United States, but rather whether the production of the subject merchandise could be shifted between the companies in response to the imposition of antidumping duties, which could lead to changes in future levels of exports by either company or the restructuring of home market sales in an effort to reduce the dumping margin.

In addition, ICDAS argues that even if the Department were to conclude that Demir Sanayi cannot produce subject merchandise identical to that produced by ICDAS without substantial retooling, the Department may still collapse the companies if it finds that production could be shifted from Demir Sanayi to ICDAS and not vice versa without substantial retooling. ICDAS contends that the Department has consistently interpreted its regulation to require only that it be possible to shift production from one company to another.²⁹ See Slater II at 1375. ICDAS also

²⁹ Specifically, ICDAS states that in Slater II the Court remanded the Department's decision to it for additional explanation to support its interpretation of the regulation, and the Court recognized that this interpretation did have some support. However, ICDAS notes that the

cites the Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404, 40410 (July 29, 1998) (Wire Rod from Korea), in which the Department collapsed one company that could produce stainless steel wire rod from start to finish with another company that only had the facilities to finish black coil it purchased from the first company.

ICDAS contends that the Department does not have the discretion to choose between collapsing and the use of the major input rule. ICDAS argues that 19 CFR 351.401(f)(1) states “in an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity” if they meet the criteria set forth in the provision. Therefore, according to ICDAS, because it and Demir Sanayi meet the criteria for collapsing, the Department must collapse them rather than apply the major input rule. ICDAS asserts that 19 CFR 351.401(f) makes no mention of the major input rule as an alternative, and likewise, 19 CFR 351.407(b) (i.e., the regulation governing the major input rule) makes no mention that it is an alternative to collapsing.³⁰ In addition, ICDAS maintains that the petitioners did not point to any Department determinations in which the Department exercised such discretion, nor to any instance in which the Court mandated that it do so. ICDAS argues that the Department traditionally performs a collapsing analysis without reference to the major input rule. See, e.g., Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496 (Aug. 7, 1997). Furthermore, ICDAS maintains that even after the date of Slater II the Department has continued to make its collapsing determinations based on the two-prong test. See Final Determination in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Turkey, 69 FR 53675 (Sept. 2, 2004), and accompanying Issues and Decision Memorandum at Comment 5 and Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Italy, 69 FR 32984 (June 14, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

Further, ICDAS argues that the petitioners’ argument is based solely on their interpretation of ambiguous language in Slater II. ICDAS maintains that although the language is not clear, the Court does not specifically mandate that the Department must independently evaluate the merits of applying the collapsing and major input rules in every case even if the companies involved meet the criteria for collapsing. According to ICDAS, it appears that the Court instead believed that the Department had responded to the Court’s conclusion in Slater I that collapsing might not be supported by evidence on the record by stating that the major input rule did not apply because the companies had been collapsed. ICDAS contends that, because the issue in dispute was whether the companies actually qualified for collapsing in the first place, such an answer would be a non sequitur. ICDAS argues that interpreting the Court’s language to require an evaluation of the collapsing and major input rules regardless of whether the companies clearly qualify for

Court never made a final determination because the case was disposed of on other grounds. See Slater III.

³⁰ See also section 773(f)(3) of the Act, which is the statutory definition of the major input rule.

collapsing is strained and not supported by Department precedent. Finally, ICDAS asserts that the Supreme Court has made it clear that courts owe substantial deference to agencies' interpretations of their own regulations, stating "our task is not to decide which among several competing interpretations best serves the regulatory purpose...rather the agency's interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation." See Thomas Jefferson Univ. v. Shalala, 502 U.S. 504, 512 (1994). Therefore, ICDAS contends that the Department should collapse ICDAS and Demir Sanayi because they satisfy the criteria of the collapsing regulation.

Department's Position:

The framework for determining whether affiliated producers should be collapsed is set forth in 19 CFR 351.401(f). According to this provision,

(1) In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require a substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) Significant potential for manipulation. In identifying a significant potential for manipulation of price or production, the factors the Secretary may consider include: (i) The level of common ownership; (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

See 19 CFR 351.401(f).

We disagree with the petitioners that ICDAS and Demir Sanayi should not be collapsed because we have determined that: 1) substantial retooling would not be necessary for Demir Sanayi to produce rebar; and 2) a significant potential for the manipulation of price or production exists. Regarding the first criterion, the petitioners argue that because Demir Sanayi lacks equivalent production capabilities of ICDAS (i.e., a melt shop and continuous casting facility), it does not fit the profile in the Department's collapsing regulation. The petitioners cite the Slater cases in support of their argument, which the petitioners claim stand for the general proposition that unless affiliated parties have equivalent production capabilities, they cannot be collapsed. However, we note that the Slater decisions are not yet final and conclusive, and may yet be appealed. More significantly, we note that in Slater III the Court did not hold that collapsing was incorrect; rather, it ruled that the Department did not provide an "adequate explanation" for its change in practice. In response, while we ultimately reversed our decision to collapse in compliance with the Court's order, we stated that the Department's position is that the companies in question should be collapsed.

In any event, we note that the facts in Stainless Steel Bar from India, the case at hand in the Slater decisions, are distinguishable from the instant case. The production facilities in the Slater decisions did not require substantial retooling, although one of the collapsed companies produced hot-rolled round bar, while the other produced cold-finished bright bar. In the instant case, ICDAS and Demir Sanayi have overlapping production facilities for an identical product (*i.e.*, rebar). We disagree with the petitioners that the decisions in the Slater cases contradict our finding here. Therefore, we continue to find that it is appropriate to treat Demir Sanayi as a producer of rebar of its own accord because it: 1) manufactured the final rebar product from billet³¹; and 2) sold rebar produced for its own account in the home market. See ICDAS's August 16, 2004, home market sales listing.

We agree with ICDAS that whether the billets used in a company's rolling mill were also produced by it is irrelevant for purposes of determining if this entity should be collapsed with another entity that produces merchandise subject to the order. See, e.g., Stainless Steel Bar from India, where the Department stated that whether one "makes billets" and the other does not is "irrelevant" to the collapsing analysis.³² The billet input and the final product (*i.e.*, rebar) are two distinct products. As noted by the Department in Stainless Steel Bar from India, it is not necessary for a company to produce billets in order to produce the final end product. See also Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Finals Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (Sept. 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1, where the Department stated "it is not our practice to consider the sourcing of inputs used to produce merchandise subject to the antidumping duty order (*i.e.*, fresh mushrooms) for the purposes of this analysis but rather we consider a producer's ability to produce the final product subject to the order (*i.e.*, preserved mushrooms) a more significant factor for determining whether the collapsing criterion is met"; Wire Rod from Korea, 63 FR at 40410, where the Department collapsed two entities even though one of the entities only had production facilities capable of annealing and pickling black coil it purchased from the other entity in order to produce the finished product; and Pipe from Germany at Comment 1, where the Department treated a company that manufactured line pipe from steel billets purchased from an affiliate as the producer of the pipe.

Regarding the petitioners' contention that the Department should have performed a substantial retooling analysis consistent with Stainless Steel Bar from Germany, we find that such an analysis is not warranted because the facts in the instant case are different. In Stainless Steel Bar from Germany the Department found that two companies had production facilities that could

³¹ Demir Sanayi produced approximately the same range of rebar products as ICDAS's other rolling mills. See ICDAS's August 16, 2004, Section D response at D-5 and the "ICDAS Cost Verification Report" at Exhibit 14.

³² The collapsing issues in Stainless Steel Bar from India is currently before the Court, but has been stayed pending a final resolution in the Slater cases. See Carpenter Tech. Corp. v. United States (03-00583), order dated January 16, 2004.

produce similar and identical merchandise within a specific millimeter range. However, the Department found that substantial retooling would be necessary for the companies to produce similar or identical merchandise outside of that specific range. Thus, the Department proceeded to consider whether there was a possibility for the manipulation of price or production in relation to the specific product range in which substantial retooling would not be required. Upon investigating the relationship between the companies, the Department found that such a possibility of manipulation did not exist, and that collapsing was not warranted. In contrast, in the instant case, there is no question as to whether the possibility for manipulation exists (see below for further discussion); moreover, as noted above Demir Sanayi produced approximately the same range of rebar products as ICDAS's other rolling mills.

Regarding the second criterion, we find that the requirements set forth in 19 CFR 351.401(f)(2) have been met in this case because ICDAS and Demir Sanayi: 1) have common ownership; 2) produce identical products; and 3) share price and cost information with respect to the merchandise under review, as evidenced by the fact that the companies, on their own initiative, reported combined detailed price and cost information in a single consolidated response to the Department's questionnaire. Moreover, we have determined that ICDAS and Demir Sanayi have intertwined operations because Demir Sanayi employees report to the management of ICDAS and all sales and marketing functions for Demir Sanayi are carried out by ICDAS; the general manager and deputy general manager of ICDAS and Demir Sanayi are the same and they have the overall responsibility for production and selling functions for both companies; and ICDAS and Demir Sanayi have identical main shareholders. See ICDAS's August 16, 2004, Section A response at A-12 and exhibits A-5 through A-7 and the "ICDAS Sales Verification Report" at 3 and verification exhibit 2. Finally, regarding our treatment of ICDAS and Demir Sanayi as a collapsed entity, we note that we treated these producers as such in the two previous administrative reviews of rebar from Turkey. See, e.g., Rebar Final 02-03 at Comment 16.

Furthermore, we disagree with the petitioners that the rationale for collapsing affiliated companies is not justified in the instant case because Demir Sanayi is not a named party to this review and ICDAS could not channel production of rebar through Demir Sanayi to circumvent the antidumping law. To the contrary, we find that if ICDAS and Demir Sanayi were not treated as a single entity, each would be eligible to receive its own dumping margin because each has the ability to produce subject merchandise. In that situation, they could chose to produce and export rebar via the affiliate with the lowest margin. We note that the Courts have recognized the Department's long-standing practice of collapsing affiliated parties to prevent the circumvention of the antidumping law. See, e.g., Koenig & Bauer-Albert AG v. United States, 90 F.Supp. 1284, 1287 (CIT 2000), which stated "Commerce's collapsing practice has been approved by the Court as a reasonable interpretation of the antidumping duty statute"; AK Steel Corp. v. United States, 34 F.Supp.2d 756, 765 (CIT 1998), aff'd in part, rev'd in part, 226 F.3d 1361 (Fed. Cir. 2000).

Finally, with regard to the petitioners' argument that the Department should consider Demir Sanayi's rolling services as a major input, we note that our decision to collapse these entities moots this argument. See Wire Rod from Korea, 63 FR at 40410 (where the Department found that once two producers are treated as a single entity, the major input rule no longer applies).

The relevant regulations (*i.e.*, 19 CFR 351.401(f) and 19 CFR 351.407(b)) do not specify that collapsing and the major input rule are alternatives to each other. We disagree with the petitioners that the Court's ruling in Viraj Group – which states that the major input rule applies to transactions between a manufacturer and “an affiliated raw material supplier or service provider” – is relevant here. See Viraj Group at 1032. While we acknowledge that the Court did make this statement, we note that it was made in reference to the transfer price analysis that the Department conducted for two companies that it did not collapse because they did not satisfy the criteria of 19 CFR 351.401(f)(1). Therefore, because the facts of the instant case are different, we have continued to treat Demir Sanayi and ICDAS as a collapsed entity for purposes of the final results.

Comment 24: Startup Adjustment for ICDAS

For purposes of the preliminary results, the Department disallowed a startup adjustment for ICDAS's Biga melt shop. ICDAS argues that the Department should allow this claimed startup adjustment for the final results because it meets the two conditions for allowing a startup adjustment set forth in section 773(f)(1)(C)(ii) of the Act. Regarding the first condition (*i.e.*, that a producer is using new production facilities or producing a new product that requires substantial additional investment), ICDAS states that the record clearly shows that its Biga melt shop is a new production facility that began operations in December 2003 and required substantial additional investment. See ICDAS's August 16, 2004, Section D response at D-38 through D-43 and Exhibit D-4 and the “ICDAS Cost Verification Report” at verification exhibit 10. ICDAS notes that in the preliminary results the Department did not question if it met the first condition, but rather addressed whether it met the second condition (*i.e.*, that production levels are limited by technical factors associated with the initial phase of commercial production).

According to ICDAS, the actual production starts data, as recorded in its books and records, specifically shows that its December 2003 production level was significantly limited by technical factors associated with the initial phase of commercial production. ICDAS objects to the Department's conclusion in the preliminary results that “when stated on an equivalent basis, it does not appear the production levels were significantly limited.” See the May 2, 2005, memorandum from Ji Young Oh to Neal Halper entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - ICDAS Celik Enerji Tersane ve Ulasim Sanayi” at 3 (“ICDAS Prelim COP/CV Calc Memo 03-04”). The respondent refutes the Department's analysis on several bases. First, ICDAS asserts that the Department is required by the SAA to determine whether production levels are significantly limited in a startup period based on actual production data. See SAA at 836; see also, Chlorinated Isocyanurates from Spain at Comment 9, where the Department established that actual production data, and not production capacity or other theoretical numbers, are to be used in this analysis.³³ ICDAS contends that the Department used a hypothetical production starts figure (*i.e.*, a month

³³ ICDAS also cites Stainless Steel Bar from India at Comment 2, where the Department held that a respondent's comparison of its actual production levels to its theoretical production capacity did not support the respondent's claim for a startup adjustment.

equivalent quantity) in its preliminary analysis that did not reflect Biga's actual production experience in December 2003. ICDAS claims that the Department's use of a month-equivalent quantity is contrary to the law because it effectively eliminates any startup period. ICDAS explains that, based on actual production starts, production was significantly limited during at least the first ten days of the month, when production was zero. However, ICDAS contends that the Department's methodology in effect attributed non-existent production to those days with no production.

Second, according to ICDAS, even based on the Department's month-equivalent analysis, the production starts in December 2003 were still significantly below the production levels of the next three months. ICDAS states that the Department generally has used the amounts of 20 to 25 percent as benchmarks for what would constitute a "significant item" (e.g., a significant ministerial error causes a 25 percent change in a dumping margin; high inflation is inflation of greater than 25 percent; and 20 percent is the benchmark for substantial quantities in conducting the sales below cost test). See 19 CFR 351.224(g) and section 773(b)(2)(C)(i) of the Act; see also, Antidumping Manual, Chapter 8 (1998). ICDAS argues that because Biga's December 2003 production quantity was more than 25 percent below the production quantities of the subsequent three months, the December 2003 quantity would qualify as significantly limited. Further, ICDAS argues that the fact that December 2003 was a startup month is evident from a comparison of the difference between its per-unit operating cost to that of January 2004. ICDAS notes that the SAA states, "in calculating the cost of production and constructed value, it is appropriate to take into account that a firm may experience unusually high costs when it is 'starting up' a new product or new production facilities." See SAA at 835. Therefore, ICDAS claims that the fact that Biga did not have any production during the first ten days of the month but still incurred substantial costs for the month shows that Biga was not ready for operations, which is a technical factor that limited its production levels.

Finally, ICDAS maintains that it would not have been unreasonable for it to have claimed that Biga's commercial production level was not reached until March 2004, based on analyzing the submitted monthly production data. See ICDAS's August 16, 2004, Section D response at Exhibit D-4. However, ICDAS claims that it took a conservative approach in claiming a startup adjustment for only one month. ICDAS also notes that in the past the Department granted it a startup adjustment for a period shorter than requested, but it did not eliminate the adjustment entirely. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice to Not Revoke in Part, 68 FR 23972, 23976 (May 6, 2003) (Rebar Prelim 01-02). Therefore, ICDAS requests that the Department allow its claimed startup adjustment for its Biga melt shop for the final results.

The petitioners argue that the Department should continue to deny ICDAS's claim because ICDAS did not meet the second condition of the test for a startup adjustment. The petitioners note that both of the criteria of section 773(f)(1)(C)(ii) of the Act must be met in order for a responding producer to be granted a startup adjustment. Additionally, the petitioners emphasize that the responding producer is responsible for demonstrating that it has met both of the criteria.

See 19 CFR 351.401(b)(1).³⁴ As support for this claim, the petitioners cite the SAA, which specifies that companies must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup. See SAA at 836. See also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613, 56618 (Oct. 22, 1998) (Mushrooms from Chile).

The petitioners state that Biga's December 2003 production level was not limited because the statute does not require a new facility to reach its optimum functioning capacity in order to have reached commercial production levels. See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part, 69 FR 54119, 54123 (Sept. 7, 2004), citing the SAA at 836. According to the petitioners, given that the production levels for December 2003 were based on a partial month, the Department had to restate the December 2003 production level on a month-equivalent level simply so that it could be compared to subsequent-month production levels. Using that data, the petitioners maintain that the production level in December 2003 was not limited when compared with the subsequent months' production levels. Therefore, the petitioners contend that Biga's December 2003 production levels were at commercial levels, even if they were not at the "optimum" level.

The petitioners also maintain that the Department's use of a month-equivalent methodology was warranted in the instant case and is consistent with the statute. The petitioners state that the statute does not define: 1) what constitutes limited production; or 2) how the Department should measure levels of production. Further, the petitioners cite the Preamble, which states, "{a}ny determination of the appropriate startup period involves a fact-intensive inquiry... {f}or this reason, the Administration intends that Commerce determine the duration of the startup period on a case-by-case basis." See Preamble, 62 FR at 7339. The petitioners argue that the month-equivalent methodology used by the Department correctly creates an "apples-to-apples" comparison that eliminates distortion in the analysis by reasonably adjusting ICDAS's actual data.

Finally, the petitioners argue that the Department should deny ICDAS a startup adjustment because it failed to support its assertion that technical factors, rather than other factors, resulted in the supposedly limited production. Specifically, the petitioners contend that ICDAS made unsubstantiated claims in its August 16, 2004, Section D response regarding Biga's production levels that did not meet the burden of proof established in the SAA. Further, the petitioners

³⁴ The petitioners also cite several cases in which the burden of proof for a claimed adjustment to fair market value was found to lie with the party claiming the adjustment. See Asociacion de Exportadores de Flores v. United States, 901 F.2d 1089, 1093 (Fed. Cir. 1990), cert denied, Floreamerica, S.A. v. United States, 498 US 848, 111 S. Ct. 136 (1990); Fujitsu v. United States 88 F.3d 1034, 1040; Timken Company v. United States, 673 F. Supp. 495, 513 (CIT 1987); and NTN Bearing Corp. of America v. United States, 835 F. Supp. 646, 652 (CIT 1993).

maintain that when the Department requested an explanation regarding how the respondent's technical factors limited production levels, ICDAS did not provide one. The petitioners cite to the "ICDAS Cost Verification Report" at 25, which states "in the supplemental questionnaire response submitted on January 25, 2005, the Department asked ICDAS to describe how these technical factors limited production levels but {the Department} received no further explanation." Therefore, the petitioners argue that ICDAS failed to cooperate to the best of its ability and additionally did not meet its burden of proof for the entitlement to a startup adjustment. As a result, the petitioners argue that the Department should reject ICDAS's claim for a startup adjustment based on AFA. Nonetheless, if the Department does not use AFA, the petitioners maintain that the Department should continue to deny the adjustment based on past precedent. The petitioners state that the Department has consistently rejected startup adjustments when respondents fail to adequately demonstrate that their production levels were limited due to technical factors. See Mushrooms from Chile, 63 FR at 56618 and Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part, 63 FR 37320, 37325 (July 10, 1998). In addition, the petitioners claim that the Department should adjust the COGS denominator in ICDAS's G&A and financial expense rate calculations to exclude the amortized portion of this startup adjustment in order to properly exclude all elements of the startup adjustment from the COP.

Department's Position:

We disagree with ICDAS that it has met the Department's requirement for a startup adjustment under section 773(f)(1)(C)(ii) of the Act, which sets forth the criteria that a respondent must meet in order for the Department to grant an adjustment for startup operations. According to section 773(f)(1)(C)(ii) of the Act, an adjustment is warranted if:

- (I) a producer is using new production facilities or producing a new product that requires substantial additional investment; and
- (II) production levels are limited by technical factors associated with the initial phase of commercial production.

Specifically, we continue to find that ICDAS failed to meet the second criterion which stipulates that a respondent must demonstrate that its production levels were limited by technical factors associated with the initial phase of commercial production. The SAA clearly explains the respondent's burden of proof as follows:

The Administration intends that the burden will be on companies to demonstrate their entitlement to a startup adjustment. Specifically, companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems. In addition, to receive a startup adjustment, companies will be required to explain their production situation and identify those technical difficulties associated with startup that

resulted in the underutilization of facilities. This is consistent with the general rule in antidumping practice that a party seeking an adjustment has the burden of establishing entitlement to that adjustment as both a legal and factual matter.

See SAA at 836.

In the Department's May 13, 2004, questionnaire, we asked ICDAS to explain how the production levels were limited by technical factors associated with the initial phase of commercial production. The Department further instructed ICDAS that as part of its analysis, it must: 1) describe the technical factors which limited production; 2) demonstrate how these technical factors restricted the number of units processed by the company; and 3) demonstrate how these technical factors are unique to the startup phase, and are not a result of chronic or normal production problems. See the May 13, 2004, Section D questionnaire at D-10. In response to this questionnaire, ICDAS explained that production levels were limited by technical factors associated with the initial stage of commercial production because the company had to: 1) develop production parameters for the new operation; 2) install, adjust, and calibrate the new equipment; and 3) train employees to operate the equipment. See ICDAS's August 16, 2004, Section D response at D-40. Because ICDAS's claimed technical factors were very general in nature, we requested more details on how they specifically limited production levels. See the Department's December 21, 2004, supplemental D questionnaire issued to ICDAS. In its response, ICDAS did not provide any further explanation. See ICDAS's January 25, 2005, supplemental D questionnaire response. The Department then restated in the "ICDAS Cost Verification Report" that it had received no explanation about how the claimed technical factors limited production levels. See "ICDAS Cost Verification Report" at 25. Without an explanation of how the claimed technical factors limited production levels, we are not able to determine whether ICDAS's production levels were limited by technical factors associated with the initial phase of commercial production, within the meaning of section 773(f)(1)(C)(ii)(II) of the Act.

In addition to ICDAS's failure to demonstrate that its production levels were limited by technical factors associated with the initial phase of commercial production, we are not convinced by ICDAS's assertion that it had not achieved commercial production by December 2003. In analyzing the production starts, we computed a month-equivalent quantity for December 2003 because production did not start until part way through the month. We computed production starts using an equivalency method in order to have comparable production starts levels for the months of December 2003, January 2004, and thereon. We compared the December equivalent unit production starts quantity to that for January 2004 through March 2004. Based on our analysis, we continue to find that the production starts in December were at commercial production levels. While we agree with ICDAS that the December 2003 production starts were not at the "optimal" production level that ICDAS planned to achieve, we note that optimal production levels are not necessary to reach commercial production levels. The amount of production starts in December 2003 clearly exhibited confidence in the new production facilities. Had ICDAS had not been confident in its plant's ability to produce, we would have expected to see a significantly lower number of production starts.

We find that ICDAS's reliance on Chlorinated Isocyanurates from Spain and Stainless Steel Bar from India is misplaced. In these cases, the Department found that it was inappropriate to rely on the producer's projections of future volumes/costs or theoretical production quantities, respectively, in determining whether commercial production levels were achieved. However, in the instant case, we relied on theoretical data only to create a month-equivalent quantity for December 2003 because production began in the middle of the month. In addition, we note that the facts in Rebar Prelim 01-02 are also distinguishable from those here; in Rebar Prelim 01-02, while a startup adjustment was granted for a shorter period than requested, both criteria were met for such an adjustment. Therefore, we continue to find that ICDAS has not met the requirement of section 773(f)(1)(C)(ii)(II) of the Act that its production levels were limited by technical factors associated with the initial phase of commercial production.

Regarding the petitioners' assertion that we should exclude the amortized portion of this startup adjustment from the COGS in ICDAS's G&A and financial expense rate calculations, we note that the amortized startup expenses reflected in COGS relate to a startup adjustment from a previous review. Because the expenses corresponding to that prior startup adjustment are included in ICDAS's COM, we find it appropriate to continue to include the startup amortization amount in the COGS denominator. Therefore, we have not adjusted the COGS denominators for the G&A and financial expense rate calculations for the startup amortization for the final results.

Comment 25: Gain on Sale of Ship for ICDAS

In its questionnaire response, ICDAS reported that it earned certain income from the rental of vessels during the POR and that it sold a vessel at a gain. ICDAS claimed both of these items as offsets to its G&A expenses. However, for purposes of the preliminary results, we disallowed ICDAS's vessel rental income because the corresponding cost of operating the ship was not reflected in the reported COP. See the "ICDAS Cost Verification Report" at 4; see also Certain Cold-Rolled Carbon Steel Flat Products from France: Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 62114 (Oct. 3, 2002), and accompanying Issues and Decision Memorandum at Comment 24.

The petitioners agree with the Department's treatment of vessel rental income. However, they contend that the Department should have disallowed ICDAS's gain on the sale of a ship as an offset to its G&A expenses because: 1) this gain contributed to the calculation of negative G&A expenses during the POR for ICDAS; and 2) conceptually there is no difference between this gain and rental revenue related to the same asset. As support for this latter assertion, the petitioners cite "Statement of Financial Accounting Concepts 6 of U.S. GAAP," which defines assets broadly as "probable future economic benefits," and further conveys that the assets may be in any form including rent, lease, or outright sale of an asset. See Delaney, Epstein, Nach, and Budak, GAAP 2003: Interpretation and Application of Generally Accepted Accounting Principles, John Wiley and Sons (2002) at 28.

Further, while the petitioners acknowledge that the Department allowed a similar gain on the sale of a used ship in the previous review (see Rebar Final 02-03 at Comment 21), they claim that this decision was erroneous because it did not address: 1) whether the asset in question belonged to a

separate activity; and 2) whether the corresponding costs of that activity were included in the reported costs. Therefore, the petitioners maintain that, because ICDAS's ships are a separate business from the activity to be included in COP, the corresponding revenues should be excluded. As support for their position, the petitioners cite CTL Plate from Korea at Comment 14, where the Department found "... in cases where the activity is comparatively small in relation to the company's primary activities, the Department has included the occasional miscellaneous gain or loss in G&A expense ... however, at the point where an activity is significant enough to constitute a separate business activity, the Department should treat it as such." Finally, the petitioners argue that it is the Department's practice to only allow a gain on the sale of an asset to be used as an offset to the costs if the underlying asset generated expenses that were captured in the reported COP. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the Republic of Korea, 66 FR 33526, 33528 (June 22, 2001) at Comment 7 (Rebar from Korea). Therefore, in accordance with CTL Plate from Korea and Rebar from Korea, the petitioners contend that, because the Department has determined that the ship in question belonged to a rental activity and the costs of this activity were not included in the COP, the revenues generated by this ship should continue to be excluded from the COP calculations.

ICDAS contends that the Department should continue to offset its G&A expenses for this gain, stating that: 1) the ship in question was used for ICDAS's general business of steel manufacturing; and 2) various costs related to the ship were included in its reported costs. Specifically, ICDAS explains that its business is heavily dependent on sea transportation due to its need to import scrap metal for the manufacture steel products and to transport finished products exported to its customers. ICDAS asserts that, as a consequence, it maintains a small fleet of ships in order to have maritime transportation available. Therefore, ICDAS claims that the ships were related to its general manufacturing business. ICDAS contends that after this fact was verified in the previous review, the expenses and gain in question were properly treated as general operating expenses and revenue items, respectively. Moreover, ICDAS argues that various ship costs were included in ICDAS's reported costs, such as financing costs which were included in its revised financial expenses. See the "ICDAS Cost Verification Report" at verification exhibit 1. Finally, ICDAS asserts that the rental revenue that was disallowed from reported costs was not related to the ship, but rather to the rental of facilities at the Biga plant. As a result, ICDAS argues that the Department should allow the gain on the sale of the ship as an offset to its G&A expenses.

Department's Position:

We have reconsidered our position and find that it is not appropriate to allow ICDAS's gain on the sale of a ship as an offset to its G&A expenses. As it is seen from ICDAS's audited financial statements (see ICDAS's August 16, 2004, Section A response at page 9 of Exhibit 17), the company reports its cost of sales by line of business. These separate business lines include steel manufacturing, trading operations, and cost of services rendered, which includes the shipping operations. Shipping vessels are the primary capital assets required in the shipping line of business, just as steel mills are the required capital assets for steel manufacturing. When determining whether an activity is related to the general operations of a company, the Department

considers the nature, significance, and relationship of that activity to the general operations of the company. Routine sales of machinery and equipment are a normal part of ongoing operations for a manufacturing company and, accordingly, any resulting gains or losses are normally included as part of the G&A expense calculation. However, the sale of a fully functioning plant or business unit, or in the case of a company that has shipping operations, the sale of an entire shipping vessel, are significant transactions, both in form and value. The resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general production operations of the company.

ICDAS is in the business of manufacturing and selling merchandise and services, not selling shipping vessels. As a consequence, we have excluded the gain on the sale of the ship from ICDAS's G&A expense rate calculation for the final results, consistent with the Department's precedent. See Lumber from Canada at Comment 9, where the Department disallowed the gain from the sale of pulp mill; Chlorinated Isocyanurates from Spain at Comment 11, where the Department disallowed any income or expenses related to the sale of production facility; Shrimp from Brazil at Comment 8, where the Department did not include the loss on the sale of a shrimp farm.

Comment 26: Calculation of G&A Expenses for ICDAS

According to the petitioners, in calculating G&A expenses, ICDAS excluded a debit balance related to income associated with its Biga Residential Services account, while failing to exclude a corresponding credit related to the same activity. The petitioners argue that the Department should exclude this credit for the final results.

ICDAS contends that it excluded both the debit and the credit in question. According to ICDAS, not only is this amount minuscule, but it would be a legitimate offset to G&A because it related to dormitory and food services provided and sold to workers at one of its factories (i.e., Biga). However, ICDAS maintains that, given that these services relate to the normal operations at the plant, the credit should be allowed in the reported costs (although it was not claimed in ICDAS's response). Regarding the debit at issue, ICDAS disagrees that this debit is relevant because it is simply related to a reclassification from one account to another. See ICDAS's August 16, 2004, Section D response at Exhibit D-17 and the "ICDAS Cost Verification Report" at verification exhibit 18.

Department's Position:

At verification, we determined that the net income from the Biga Residential Services operation was excluded from the "other income" amount found in ICDAS's financial statements. In our cost verification exhibits, it is first shown as an inflow item and subsequently shown as an outflow item, within the "other income" account. See the "ICDAS Cost Verification Report" at verification exhibit 18. As a result, we concluded that there was no other income related to the Biga Residential Services operation included in ICDAS's G&A expense rate calculation. Therefore, we have not made any corrections related to this item for the final results.

However, we disagree with the respondent's contention that we should include this income amount in ICDAS's COP and CV calculations. ICDAS did not include this amount in its reported costs. There is no record evidence regarding this minor income item as the details surrounding this item were only mentioned for the first time in the respondent's rebuttal briefs. Absent any timely explanations about this item, we are unable to fully analyze the nature of it. Therefore, we have no basis to alter ICDAS's reported costs to include this minor income item in COP and CV for the final results.

Comment 27: Exchange Rate Gains for ICDAS

In its questionnaire response, ICDAS reported net negative total financing expenses. For purposes of the preliminary results, we disallowed the negative portion of this amount and instead set the financial expense ratio to zero. ICDAS acknowledges that in the past the Department has allowed offsets to financial expenses only up to the amount of the financial expenses themselves. See "ICDAS Prelim COP/CV Calc Memo 03-04" at 3, citing SRAMs from Taiwan, 63 FR at 8933. However, ICDAS contends that SRAMs from Taiwan is not analogous to the situation here, because the offset in question related to interest income rather than foreign exchange gains. Further, ICDAS argues that the Department recently adopted a policy requiring it to include all exchange rate gains and losses in the COP calculations. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045, 11048 (Mar. 7, 2003) (Mushrooms from India), unchanged in the final results.

ICDAS maintains that the only item the Department excludes from the financial expense ratio is interest income that relates to a distinct and separate business activity (i.e., investments). As such, ICDAS states that the Department has excluded long-term interest income from the financial expense ratio because a manufacturing company does not generally invest in long-term certificates of deposit or make long-term loans to unaffiliated entities as part of its manufacturing operations. See SRAMs from Taiwan, 63 FR at 8933; see also, Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico, 58 FR 43327 (Aug. 16, 1993). On the contrary, ICDAS notes that the Department includes short-term interest income in the financial expense ratio because the Department recognizes that the short-term interest income occurs as a result of the manufacturer's need to maintain working capital as part of its general operations. ICDAS maintains that the Department's practice related to short-term interest income offsets predates its practice related to foreign exchange gains and losses established in Mushrooms from India. See Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part, 67 FR 298 (Jan. 3, 2002), and accompanying Issues and Decision Memorandum at Comment 3 (Pasta from Turkey); see also Notice of Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico, 60 FR 2378 (Jan. 9, 1995). ICDAS asserts

that these cases establish the rationale for excluding interest income in computing COP, which is to exclude the income that relates to a business activity that is not part of COP.³⁵

ICDAS argues that exchange rate gains and losses are fundamentally different from interest income. According to ICDAS, the main reason that exchange gains and losses are realized is because of the company's production and sale of merchandise which takes place in multiple currencies, and thus they are not a distinct element of cost. Specifically, ICDAS maintains that these gains and losses are computed as an overall adjustment necessary to ensure that all of the costs and sales are properly stated in a single currency, which is required by GAAP. ICDAS emphasizes that the adjustments are not inherently financial expenses and that they are usually recorded as separate line items in the financial statements. See ICDAS's August 16, 2004, Section D response at exhibit D-17; see also "ICDAS Cost Verification Report" at verification exhibit 18. Therefore, ICDAS argues that because the overall exchange rate gain or loss is a necessary adjustment to other elements of cost that make up the COP, there is no legal or accounting basis for capping or otherwise limiting that adjustment to the amount of financial expenses or to any other distinct expense. As support for this assertion, ICDAS cites Lumber from Canada at Comment 24, which relies upon the policy established in Mushrooms from India to include all exchange rate gains and losses in the calculation of COP. See Rebar Prelim 01-02; see also Rebar Final 01-02 at Comment 15.

Finally, ICDAS claims that the exchange gains and losses relate directly to either manufacturing costs, sales, or general operations of the company. ICDAS explains that when a manufacturing input is purchased or a sale is booked in foreign currency, due to exchange rate fluctuations, the booked expenses do not reflect the company's actual costs in TL. Therefore, the exchange gains and losses simply translate the recorded expense or sale amount to an actual functional currency amount. Therefore, in light of the above reasons, ICDAS argues that the Department should take into account all foreign exchange rate gains rather than limiting such gains to the amount of interest paid for the final results.

The petitioners claim that the Department should follow its long-standing policy and continue to deny ICDAS's financing gains. The petitioners contend that this net gain was the result of investment activities in foreign exchange currencies, which are not included in the financial expense calculation. Further, the petitioners assert that the Department established its current policy regarding the inclusion of foreign exchange gains and losses in Mushrooms from India, where the Department explained that it "... will normally include in the interest expense rate calculation all foreign exchange gains and losses [and] there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice." The petitioners also point to Lumber from Canada, where they argue that the Department's position on foreign exchange gains and losses relates to companies in the business of producing and selling merchandise and not those in the business of speculating with foreign currencies.

³⁵ ICDAS cites section 773(b)(3)(A) and (B) of the Act, which defines COP as including "the cost of materials and of fabrication or other processing" and "selling, general, and administrative expenses."

Therefore, the petitioners conclude that the Department's current policy does not require inclusion of all foreign exchange gains and losses, but rather only allows for the inclusion of foreign exchange gains and losses to the extent that those activities were the result of producing and selling merchandise, and not from the business of speculating in foreign currencies.

The petitioners contend that unlike those of the respondent in Lumber from Canada, ICDAS's hedging activities go well beyond the daily management of foreign currencies associated with producing and selling the subject merchandise. The petitioners maintain that the amount of exchange gains earned by ICDAS during the POR shows that it was in the business of speculating in foreign currencies in order to generate substantial gains. See the "ICDAS Cost Verification Report" at page 28. Specifically, the petitioners contend that ICDAS's exchange gains are significant enough to be categorized as a separate investment business activity. According to the petitioners, the Department's practice to exclude such income (e.g., investment income) from the financial expense ratio has been upheld by the Court. See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 67 FR 55789 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 34 (Ball Bearings), citing Timken v. United States, 852 F.Supp. 1040, 1048 (CIT 1994); see also PSF from Korea at Comment 15. Therefore, the petitioners maintain that the Department should exclude the foreign exchange gains from ICDAS's financial expense rate calculation.

Nonetheless, the petitioners contend that, if the Department does include the exchange gains in the financial expense rate, it should not allow ICDAS to offset its COP with claimed negative net total foreign expenses. As support for their assertion, the petitioners cite NTN Bearing Corp. v. United States, 905 F. Supp. 1083, 1097 (CIT 1995), which held that "... to qualify for an offset, interest income must be related to the 'ordinary operations of the company.'" In accordance with the Department's established policy, the petitioners maintain that the Department should limit the income so that the financial expense rate is zero. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Korea, 58 FR 11029 (Feb. 23, 1993).

Department's Position:

We disagree with ICDAS that its foreign exchange gains and losses are realized mainly because of its production and sale of merchandise. Rather, such gains and losses result from the cash management decisions of a company that expose it to foreign exchange gains and losses. Financing decisions such as paying for purchases immediately or carrying them as an account payable; making sales on a credit (i.e., accounts receivable) or requiring immediate payment; borrowing in a foreign currency or home currency; entering into foreign currency contracts, etc., - occur apart from the company's manufacturing and sales activities.

For example, when a company purchases inputs using a foreign currency, the company can, at the time of purchase, pay in cash immediately based on the prevailing exchange rates between its domestic currency and the foreign currency, thus avoiding any exposure to exchange rate gains or losses. We note that even if the company finances the purchase, the value of the raw materials is recorded at the equivalent domestic currency value on the date of sale, and not at the subsequent

value when the payable is settled. If the company decides to pay for the purchase at a later date (*i.e.*, set it up as an account payable, which is in effect buying on credit), the change in the exchange rate from the date of purchase to the date of payment of the account payable creates a foreign exchange gain or loss. As such, it is not the purchase transaction that creates the foreign exchange gain or loss, but it is the decision by the company to delay cash payment and finance the purchase.

The same reasoning applies to export sales transactions which are denominated in a foreign currency. A company could demand payment immediately rather than on credit (*i.e.*, set up accounts receivable from customers) or finance the sale by purchasing currency contracts to hedge its exposure to large balances of foreign accounts receivable. Thus, the company can enter into a second financing decision to protect itself from the risks of the initial financing decision. Therefore, a company's decision to extend credit to its customers and expose itself to foreign currency fluctuations is a cash management decision. Accordingly, we consider a company's overall foreign exchange gain or loss to be a part of the company's overall net financing expense.

We also disagree with petitioners that foreign exchange gains and losses can somehow be segregated into those activities that relate to producing and selling merchandise and those that relate to the business of speculating in foreign currencies. Although ICDAS referenced our practice related to interest income offsets as stated in SRAMs from Taiwan, we note that this case predates the Department's change in policy regarding foreign exchange gains and losses. As ICDAS noted, under our current established practice in Mushrooms from India, we normally include in the financial expense ratio calculation all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest-level parent company. See Lumber from Canada at Comment 24, Pasta from Turkey at Comment 3; see also Rebar Prelim 01-02, 68 FR at 23975, unchanged in the final results. This approach takes into account how well the entity as a whole manages its foreign currency exposure. First, companies in the business of producing and selling merchandise are generally not in the business of speculating with foreign currencies. As such, they engage in these activities in order to minimize the risk of holding foreign-denominated monetary assets and liabilities. Companies often engage in a variety of activities from an enterprise-wide perspective to hedge exposure. Therefore, companies try to maintain a balanced holding of foreign-denominated assets and liabilities in any one currency so as to offset any foreign exchange losses with foreign exchange gains (*i.e.*, hedging their foreign currency exposure on a company-wide basis, not for specific accounts). The inclusion of only certain components that result from the company's coordinated efforts to manage its foreign currency exposure does not adequately reflect the financial results of the enterprise's foreign exchange management efforts adequately. Thus, we do not believe that it is possible to separate the foreign exchange gains and losses into component parts.

Further, we disagree with the petitioners' contention that the size of the exchange gains proves that a company is in the business of speculating in foreign currencies in order to generate substantial gains. The management of a company's balance of foreign-denominated assets and liabilities factors into its overall cash management and is ultimately an integral part of a company's cost of doing business when operating in foreign markets. We recognize that in some years, the resulting gain or loss could be substantial in either direction; however, that alone does

not indicate that ICDAS is in the business of foreign currency speculation. Therefore, we note that the petitioners' reliance on Ball Bearings and Lumber from Canada is misplaced because there is no evidence on the record here to support the petitioners' claim that ICDAS is in the business of foreign currency speculation.

There is usually a cost associated with financing operations, which is what we intend to capture as part of the financial expense. As a result, we include a cost of borrowing as determined by various factors such as management's decisions involving the amount of debt held, management of cash funds, etc. See Silicomanganese from Brazil at Comment 14. If income is generated as part of those activities, we allow it to offset the financing expense up to the amount of the financial expenses incurred. In cases where a company's financial income has exceeded its financial expenses, we have recognized that the company's cost of borrowing is zero and do not include an amount for financial costs. We note that neither Mushrooms from India nor Pasta from Turkey addressed a net foreign exchange gain. Further, if a company has enough financial income to cover its financial expenses, then it will not have a resulting cost for financing and the financing cost used for COP and CV will be zero. It would be inappropriate for the company to reduce other components of the COP by the net financing income. Sections 773(b)(3) and 773(e) of the Act identify the specific components of cost that the Department is to measure. Moreover, while certain types of income can legitimately be used to offset an expense, they can be used to do so only to the extent that there are costs to offset. The CIT has upheld this position in Cinsa, S.A. de C.V. v. United States, 966 F. Supp. 1230, 1239-1240 (CIT 1997), where it said:

“The Court finds that expenses by their nature cannot produce a negative effect on the COP. Expenses, as a component of costs, cannot become a profit by the nature of their designation... Based on sound accounting and economic principles, the Court declines to accept a finding of negative costs when calculating COP.”

The Court explains that financial expenses, as a component of COP, are a discrete expense account and as such, cannot provide an offset to any other expense accounts. For these reasons and for the final results, we have included the net foreign exchange gains in the interest expense rate computation, recognizing that the financial expense component was zero.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree _____

Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)